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7 SARA LEE CORPORATION, EARTHGRAINS  
BAKING COMPANIES, INC., BIMBO  
8 BAKERIES USA, INC., MARTY BAKER and RIC  
DIAZ

**FILED**

MAY 24 2013

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 OAKLAND DIVISION

13 MOHAMED HUGAIS,

14 Plaintiff,

15 v.

16 SARA LEE CORPORATION, a Maryland  
corporation doing business in California;  
17 EARTHGRAINS BAKING COMPANY,  
INC., a Delaware corporation doing  
18 business in California; BIMBO  
BAKERIES USA, INC., a Delaware  
19 corporation doing business in California;  
MARTY BAKER, an individual; RIC  
20 DIAZ, an individual, and DOES 1 through  
50, inclusive,

21 Defendants.  
22

Case No.

**C13-2368 JCS**

**NOTICE OF REMOVAL OF CIVIL  
ACTION TO FEDERAL COURT UNDER  
28 U.S.C. §§ 1332, 1441 AND 1446  
(DIVERSITY)**

Complaint Filed: April 4, 2013

23 TO THE CLERK OF THE ABOVE-ENTITLED COURT, AND TO PLAINTIFF MOHAMED  
24 HUGAIS, AND HIS ATTORNEYS OF RECORD:

25 PLEASE TAKE NOTICE that Defendants SARA LEE CORPORATION,  
26 EARTHGRAINS BAKING COMPANIES, INC., BIMBO BAKERIES USA, INC., MARTY  
27 BAKER and RIC DIAZ (collectively "Defendants") hereby remove the above-entitled action from  
28 the Superior Court of the State of California for the County of Alameda, Case No. RG13674251, to

NOTICE OF REMOVAL OF CIVIL ACTION  
TO FEDERAL COURT

1 the United States District Court for the Northern District of California, pursuant to 28 U.S.C. §§  
2 1332, 1441 and 1446.

3 This case is being removed on complete diversity of citizenship pursuant to 28 U.S.C.  
4 Sections 1332, 1441, and 1446. The specific grounds for removal are as follows:

### 5 **JURISDICTION**

6 1. This Court has original jurisdiction over this action pursuant to 28 U.S.C.  
7 §1332(a)(1), and this action is one that may be removed to this Court pursuant to the provisions of  
8 28 U.S.C. §1441(a), in that it is a civil action wherein the amount in controversy for the named  
9 Plaintiff exceeds \$75,000, exclusive of interest and costs, and it is a civil action between citizens of  
10 different states.

11 2. Here, complete diversity jurisdiction exists because Plaintiff is a citizen of the  
12 State of California. Defendant Sara Lee Corporation is a corporation incorporated and existing  
13 under the laws of the State of Maryland, and has its principal place of business in Chicago, Illinois.  
14 Defendant Earthgrains Baking Companies, Inc. is a corporation incorporated under the laws of the  
15 State of Delaware and has its principal place of business in Horsham, Pennsylvania. Defendant  
16 Bimbo Bakeries USA, Inc. is a corporation organized under the laws of the State of Delaware, with  
17 its principal place of business in Horsham, Pennsylvania. As discussed in detail below, Defendants  
18 Marty Baker and Ric Diaz must be disregarded for the purposes of determining diversity jurisdiction  
19 because they are “sham” defendants, as Plaintiff cannot establish any individual liability against  
20 them based on the allegations pled in Plaintiff’s Complaint.

### 21 **VENUE**

22 3. This action was filed in the Superior Court of California for the County of  
23 Alameda. Venue is proper in the United States District Court for the Northern District of California  
24 pursuant to 28 U.S.C. §§ 84 (c)(2), 1391 and 1446.

### 25 **INTRAJURISDICTIONAL ASSIGNMENT**

26 4. This matter is properly assigned to the Oakland Division because all the actions  
27 which allegedly give rise to Defendants’ liability occurred in Alameda County. *See* Northern  
28 District Local Rule 3-2(c)(d), 3-5(b).

**GENERAL INFORMATION**

5. On April 4, 2013, Plaintiff filed a Complaint in the Superior Court of the State of California for the County of Alameda, entitled *MOHAMED HUGAIS, Plaintiff v. SARA LEE CORPORATION, a Maryland corporation doing business in California; EARTHGRAINS BAKING COMPANY, INC., a Delaware corporation doing business in California; BIMBO BAKERIES USA, INC., a Delaware corporation doing business in California; MARTY BAKER, an individual; RIC DIAZ, an individual, and DOES 1 through 50, inclusive*, docketed as Case No. RG13674251 (the "Complaint").

6. The Complaint alleges thirteen causes of action for: (1) Discrimination Based Upon Race and/or National Origin in Violation of the Fair Employment and Housing Act ("FEHA") (Cal. Gov. Code §§ 12900 et seq.); (2) Harassment Based Upon Race and/or National Origin in Violation of FEHA (Cal. Gov. Code §§ 12900 et seq.); (3) Discrimination Based Upon Religion in Violation of FEHA (Cal. Gov. Code §§ 12900 et seq.) (4) Harassment Based Upon Religion in Violation of FEHA (Cal. Gov. Code §§ 12900 et seq.); (5) Retaliation in Violation of FEHA (Cal. Gov. Code §§ 12900 et seq.); (6) Interference in Violation of California Family Rights Act (Cal. Gov. Code §§ 12900 et seq.); (7) Retaliation in Violation of California Family Rights Act (Cal. Gov. Code §§ 12900 et seq.); (8) Failure to Take Reasonable Steps To Prevent Harassment, Discrimination and Retaliation In Violation of FEHA (Cal. Gov. Code §§ 12900 et seq.); (9) Failure to Take Appropriate Remedial Measures In Violation of FEHA (Cal. Gov. Code §§ 12900 et seq.); (10) Retaliation in Violation of Labor Code § 6310; (11) Negligent Promotion and Hiring and Supervision; (12) Intentional Infliction of Emotional Distress; and (13) Failure to Pay Wages Owed (Lab. Code §§ 204, 510, 1194 and 1198). A true and correct copy of the Complaint is attached hereto as Exhibit A.

7. On April 26, 2013, Defendants Earthgrains Baking Companies, Inc. ("Earthgrains") and Bimbo Bakeries USA, Inc. ("Bimbo") were served with a copy of the Summons and Complaint via its agent for service of process, CT Corporation. On May 1, 2013, Defendant Sara Lee Corporation was served with a copy of the Summons and Complaint. On April 30, 2013, Defendant Marty Baker ("Baker") was served with a copy of the Summons and Complaint. On May



7, 2013, Defendant Ric Diaz ("Diaz") was served with a copy of the Summons and Complaint. At the same time, all Defendants received a Summons, Notice of Case Management Conference and Order, Notice of Assignment of Judge for All Purposes, Alternative Dispute Resolution (ADR) Information Packet and Stipulation to Attend Alternative Dispute Resolution (ADR) and Delay Initial Case Management Conference for 90 Days. True and correct copies of these documents are attached hereto as Exhibits B, C, D, E, F and G respectively.

8. Defendants are informed and believe that none of the Doe Defendants have been identified or served.

9. On May 23, 2013, Defendants SARA LEE CORPORATION, EARTHGRAINS BAKING COMPANIES, INC. and BIMBO BAKERIES USA, INC. filed their Answer to Plaintiff's Complaint in the Superior Court of the County of Alameda. A true and correct conformed copy of Defendants' General Denial and Affirmative Defenses is attached hereto as Exhibit H.

10. On May 23, 2013, Defendants filed Defendants' Motion for Peremptory Disqualification Pursuant to Code of Civil Procedure § 170.6; Declaration of Theodora R. Lee. A true and correct copy of Defendants' Motion for Peremptory Disqualification Pursuant to Code of Civil Procedure § 170.6; Declaration of Theodora R. Lee is attached collectively hereto as Exhibit I.

11. Pursuant to 28 U.S.C. section 1446(d), the attached exhibits constitute all process, pleadings, and orders served upon Defendant or filed or received in this action by Defendant. Moreover, no further proceedings have been conducted in this case in the Superior Court of the County of Alameda. Accordingly, the requirements of 28 U.S.C. § 1446(c) have been satisfied.

#### **TIMELINESS OF REMOVAL**

12. This Notice of Removal is timely in that it has been filed by Defendants within thirty (30) days after receipt by Defendants of a paper from which it may first be ascertained that the case is one which is or has become removable, and Defendants' Notice of Removal is not made more than one year after commencement of the action. 28 U.S.C. §1446(b).

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**COMPLETE DIVERSITY OF CITIZENSHIP**

13. According to Plaintiff, Plaintiff is and at all relevant times mentioned in his Complaint worked in and was a resident of Alameda County, California. (Complaint ¶1.) On that basis, Defendants allege that Plaintiff is a citizen of the State of California. *See State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994) (place of residence is *prima facie* evidence of domicile for purposes of determining citizenship).

14. Plaintiff alleges in his Complaint that Defendants Sara Lee Corporation, Earthgrains Baking Companies, Inc. and Bimbo Bakeries USA, Inc. were corporations “doing business in the State of California” and “[a]t all times material to this Complaint the employer of Plaintiff.” (*Id.* at ¶¶ 2-4.)<sup>1</sup> None of the above-named corporate Defendants are citizens of California.

15. Plaintiff further alleges that at all relevant times herein, individual Defendants Marty Baker and Ric Diaz were residents of the County of Alameda, within the State of California. (*Id.* at ¶¶ 5-6.) However, as shown below, Defendants Baker and Diaz are sham defendants who have been improperly named in this action in a blatant attempt to defeat removal based upon diversity jurisdiction in this Court.

16. Does 1 through 50, inclusive, are wholly fictitious. The Complaint does not set forth the identity or status of any said fictitious defendants, nor does it set forth any charging allegation against any fictitious defendants. The citizenship of these doe defendants is to be disregarded for the purposes of determining diversity jurisdiction, and therefore cannot destroy the diversity of citizenship between the parties in this action. 28 U.S.C. § 1441(a); *accord Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 690-691 (9th Cir. 1998) (citing to 28 U.S.C. § 1441(a)); *see also Fristoe v. Reynolds Metals Co.*, 615 F.2d 1209, 1213 (9th Cir. 1980).

17. When the non-California citizenship of Sara Lee Corporation, Earthgrains Baking Companies, Inc. and Bimbo Bakeries USA, Inc. is considered and the sham defendants'

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<sup>1</sup> Defendants contend that Plaintiff's only employer at all times relevant herein was Earthgrains Baking Companies, Inc. By removing this case to Federal Court, Defendants are not waiving their defenses as to this issue.

1 citizenship is properly ignored, complete diversity of citizenship exists here.

2 18. For diversity purposes, a corporation is deemed to be a citizen of the state in  
3 which it has been incorporated and the state where it has its principal place of business. 28 U.S.C. §  
4 1332(c)(1). In *Hertz v. Friend*, \_\_\_ U.S. \_\_\_, 130 S.Ct. 1181, 1192 (2010), the United States  
5 Supreme Court stated the test to be applied to determine a corporation's principal place of business.  
6 The Court concluded that "'principal place of business' is best read as referring to the place where a  
7 corporation's officers direct, control, and coordinate the corporation's activities. It is the place that  
8 Courts of Appeals have called the corporation's "nerve center." And in practice it should normally  
9 be the place where the corporation maintains its headquarters—provided that the headquarters is the  
10 actual center of direction, control, and coordination, i.e., the "nerve center," and not simply an office  
11 where the corporation holds its board meetings." *Id.*

12 19. Defendant Sara Lee Corporation is a corporation incorporated and existing under  
13 the laws of the State of Maryland, and has its principal place of business in Chicago, Illinois.  
14 (Declaration of Mary D. Stoxstell ("Stoxstell Decl.") ¶ 2.) Defendant Earthgrains Baking  
15 Companies, Inc. is a corporation incorporated under the laws of the State of Delaware and has its  
16 principal place of business in Horsham, Pennsylvania. (Declaration of Bobby L. Snyder, Jr.  
17 ("Snyder Decl.") ¶ 2.) Defendant Bimbo Bakeries USA, Inc. is also a corporation organized under  
18 the laws of the State of Delaware, with its principal place of business in Horsham, Pennsylvania.  
19 (Declaration of Christopher F. Sheridan ("Sheridan Decl.") ¶ 2.)

20 **A. Defendants Baker And Diaz Are "Sham" Defendants Whose Citizenship Should**  
21 **Be Ignored For Removal Purposes.**

22 20. Defendants Baker and Diaz's citizenship must be disregarded for purposes of  
23 determining jurisdiction under 28 U.S.C. sections 1332 and 1441(b) on the grounds that Defendants  
24 Baker and Diaz are "fraudulent" or "sham" defendants, because Plaintiff will be unable to establish  
25 liability against them based on the allegations pled in the Complaint. *McCabe v. General Foods*  
26 *Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987) ("If the plaintiff fails to state a cause of action against a  
27 resident defendant, and the failure is obvious according to the settled rules of the state, the joinder of  
28 the resident defendant is fraudulent."); *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th.



1 Cir. 2001) (non-diverse sham defendant named in state court action may be disregarded); *Ritchey v.*  
 2 *Upjohn Drug Co.*, 139 F.2d 1313, 1318-19 (9th Cir.), *cert. denied*, 525 U.S. 963 (1998) (sham  
 3 defendants may be disregarded when determining diversity jurisdiction).

4 21. It is well settled that fraudulent joinder is shown, where, as here, plaintiff fails to  
 5 state a cause of action against a defendant and that failure is apparent according to the settled law of  
 6 the state. *McCabe*, 811 F.2d at 1339.

7 22. In determining whether a defendant is “fraudulently” joined, courts may properly  
 8 consider the allegations of the complaint and facts presented by the defendant in its notice of  
 9 removal. *Ritchey v. Upjohn Drug Co.*, 139 F.3d 1313, 1318 (9th Cir. 1998), *cert. denied*, 525 U.S.  
 10 963 (1998). It does not have to be shown that the joinder of a non-diverse defendant was for the  
 11 purpose of preventing removal. Rather, the question simply is whether there is any possibility that  
 12 the plaintiff will be able to establish liability against the party in question. *Id.* at 1318-19.

13 23. In his Complaint, Plaintiff alleges three causes of action against individual  
 14 defendants Baker and Diaz: the Second Cause of Action for Harassment Based Upon Race and/or  
 15 National Origin in violation of FEHA; the Fourth Cause of Action for Harassment Based Upon  
 16 Religion in violation of FEHA; and the Twelfth Cause of Action Based Upon Intentional Infliction  
 17 of Emotional Distress (“IIED”). Thus, Plaintiff’s Complaint seeks to hold defendants Baker and  
 18 Diaz, individuals, liable for harassment in violation of FEHA and IIED.

19 **1. As A Matter Of Law, Plaintiff Has Failed To State A Claim Against**  
 20 **Defendants Baker And Diaz For Harassment.**

21 **a. Plaintiff’s Allegations That Baker and Diaz Acted Within the**  
 22 **Course and Scope of Their Employment Defeat Individual**  
 23 **Liability.**

24 24. Plaintiff alleges that at all relevant times, Defendants Baker and Diaz were acting  
 25 in the course and scope of their employment (Complaint ¶¶ 5-6, 64, 82). However, actionable  
 26 harassment in violation of FEHA, by its very nature, is “conduct outside the scope of necessary job  
 27 performance.” *Reno v. Baird*, 18 Cal. 4th 640, 645-646 (1998). It is well established that an  
 28 individual supervisor like Baker may not be held liable for harassment stemming from managerial

1 conduct within the scope of his managerial position. *Reno*, 18 Cal. 4th 646-647; *Janken v. GM*  
2 *Hughes Electronics*, 46 Cal. App. 4th 55, 62 (1996). In *Reno*, the California Supreme Court  
3 explained that “commonly necessary personnel management actions such as hiring and firing, job or  
4 project assignments, office or work station assignments, promotion or demotion, performance  
5 evaluations, the provision of support, the assignment or nonassignment of supervisory functions,  
6 deciding who will and who will not attend meetings, deciding who will be laid off ... do not come  
7 within the meaning of harassment.” *Id.*, 18 Cal. 4th 646-647.

8           25. Plaintiff alleges that Baker: (1) pressured Plaintiff to give up his approved  
9 holiday vacation and suggested Plaintiff take September 11<sup>th</sup> as his holiday (Complaint ¶ 24); (2)  
10 asked Plaintiff for his driver’s license and green card but did not ask other employees for the same  
11 (Complaint ¶ 33); (3) monitored and scrutinized Plaintiff’s job performance and client relationships  
12 (Complaint ¶ 34); (4) threatened to give Plaintiff a write-up and subject him to disciplinary action if  
13 Plaintiff called in sick (Complaint ¶ 36); (5) pressured a co-worker to monitor and report any  
14 mistakes or flaws on Plaintiff’s route that could be used to discipline Plaintiff (Complaint ¶ 39); (6)  
15 followed Plaintiff on his route soliciting negative information about Plaintiff and scrutinizing all of  
16 Plaintiff’s work and at the end of the day wrote up Plaintiff for being absent (Complaint ¶ 39); and  
17 (7) changed Plaintiff’s routes, taking away his most lucrative customers while Plaintiff was out on  
18 medical leave when other employees who were of non-Middle Eastern decent and of non-Muslim  
19 faiths did not have their routes significantly changed when out on medical leave (Complaint ¶ 48).  
20 With respect to Diaz, Plaintiff alleges that during a pre-shift meeting, Diaz discussed the role of  
21 depositions in employment lawsuits. (Complaint ¶ 45.) However, none of these personnel actions  
22 supports Plaintiff’s claim of harassment. These actions are essentially a dispute regarding Plaintiff’s  
23 vacation time, or sick time, and concern Baker’s scrutiny of Plaintiff’s performance. Both types of  
24 actions are well within the responsibilities of a supervisor and do not provide a legitimate basis for a  
25 legal claim of harassment against Baker. Plaintiff is bound by the allegations contained in his  
26 pleadings in determining whether a legally sufficient cause of action exists. *Iqbal v. Hasty*, 129  
27 S.Ct. 1937 (2009); *Bell Atlantic Corp., v. Twombly*, 550 U.S. 544 (2007). Even if the allegations

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1 against Baker were true, they would not support a cause of action for harassment against him as an  
2 individual.

3 26. Plaintiff additionally alleges that Baker failed to act in response to Plaintiff's  
4 complaint of co-worker harassment (Complaint ¶ 37) and did not say anything after witnessing a co-  
5 worker yell to Plaintiff, "Don't eat that, that's against your religion" when Plaintiff reached for a  
6 donut. (Complaint ¶ 38.) With respect to Diaz, Plaintiff alleges Diaz failed to act in response to  
7 Plaintiff's complaint about offensive comment (Complaint ¶ 24); and in response to Plaintiff's  
8 discrimination and harassment complaints, advised Plaintiff that Defendants were "unable to confirm  
9 that any inappropriate behavior or conduct had occurred." (Complaint ¶ 46.) Inaction by a  
10 supervisor does not subject that supervisor to personal liability for harassment. *Fiol v. Doellstedt*, 50  
11 Cal. App. 4th 1318, 1331 (1996). A supervisor must substantially encourage continued harassment  
12 before personal liability can be imposed. *Fiol*, 50 Cal. app. 4th at 1327. Thus, neither Baker nor  
13 Diaz may be held liable for harassment based on any alleged failure to act asserted by Plaintiff and  
14 Plaintiff's harassment claim fails.

15 **b. Plaintiff's Harassment Claim Fails Because There Are No**  
16 **Allegations of Severe or Pervasive Conduct.**

17 27. In the event this Court views Baker's alleged suggestion to Plaintiff to take  
18 September 11 for vacation as harassing, Plaintiff's harassment claim still fails. In determining what  
19 constitutes sufficiently pervasive harassment, courts have held that acts of harassment "cannot be  
20 occasional, isolated, sporadic or trivial; rather, the plaintiff must show a concerted pattern of  
21 harassment of a repeated, routine or a generalized nature." *Fisher v. San Pedro Peninsula Hosp.*,  
22 214 Cal. App. 3d 590, 609-10 (1989); *Etter v. Veriflo Corp.*, 67 Cal. App. 4th 457, 466 (1998)  
23 (racial remarks made to a stock room worker every day for six weeks was not severe and pervasive  
24 conduct); *see also Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998) ("[a] recurring point in  
25 these opinions is that 'simple teasing,' . . . offhand comments, and isolated incidents (unless  
26 extremely serious) will not amount to discriminatory changes in the 'terms and conditions of  
27 employment'"). Only for very severe cases will such an isolated incident amount to harassment.  
28 *See Herberg v. California Institute of the Arts*, 101 Cal. App. 4th 142, 151 (2002) ("review of the

cases they cite reveals that such a single incident must be severe in the extreme and generally must include either physical violence or the threat thereof”) (citations omitted); *Department of Corrections v. State Personnel Bd.*, 59 Cal. App. 4th 131, 134 (1997) (noting incident of rape may be enough but not single incident in which corrections officer used profane language and shook a female Hispanic fellow officer by her collar to emphasize his point); *Doe v. Capital Cities*, 50 Cal. App. 4th 1038, 1042 (1996) (single incident where plaintiff was drugged and gang-raped). The Ninth Court has also held that “simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the terms and conditions of employment.” *Manatt v. Bank of America*, 339 F.3d 792, 798 (9th Cir. 2003). Thus, assuming *arguendo* that Baker subjected Plaintiff to the conduct complained of, this conduct does not give rise to a harassment claim as one incident of referring to September 11 is clearly not severe and pervasive.

**2. As A Matter Of Law, Plaintiff Has Failed To State An IIED Claim  
Against Defendants Baker And Diaz.**

28. Plaintiff cannot maintain his harassment or IIED claims against Defendants Baker and Diaz because they are immune from individual liability under the “manager’s privilege” doctrine. Additionally, Plaintiff’s claim for IIED against Defendants Baker and Diaz are preempted by the exclusivity of the California workers’ compensation system. Finally, Plaintiff cannot maintain a claim because he fails to state a cause of action for IIED.

**a. Manager’s Privilege Bars Plaintiff’s IIED and Harassment  
Claims.**

29. Significantly, Plaintiff alleges that Defendants Baker and Diaz at all relevant times were one of Plaintiff’s supervisors and/or managing agents “acting in the course and scope of his employment and with supervisory authority over Plaintiff.” (Complaint, ¶¶ 5-6.)

30. California law explicitly prohibits employees from suing their former managers and supervisors in tort for actions occurring in the discharge of their employment duties. *See Sheppard v. Freeman*, 67 Cal. App. 4th 339, 342 (1998). Plaintiff’s allegations are not sufficient to overcome the manager’s privilege and support a harassment or IIED claim. The

1 manager's privilege applies where a party acts within the course and scope of employment, and  
 2 functions to protect a manager's right to manage employees:

3 If that privilege protects nothing else, it protects a manager's right to  
 4 manage personnel (including firing and hiring) without fear of  
 5 independent liability, absent concrete and specific allegations that such  
 6 actions were *entirely* for the benefit of the individual. . . . The  
 manager's privilege thus [precludes] liability for all causes of action  
 pled herein.

7 *Kacludis v. GTE Sprint Communications*, 806 F. Supp. 866, 872 (N.D. Cal. 1992) (emphasis in  
 8 original). *See also Imperial Ice v. Rossier*, 18 Cal. 2d 33, 36 (1941) (existence of malice or ill will  
 9 by the manager or agent toward the Plaintiff is irrelevant and will not destroy the manager's  
 10 privilege); *Wanland v. Los Gatos Lodge, Inc.*, 230 Cal. App. 3d 1507, 1522 (1991) ("manager need  
 11 not be acting solely in his or her employer's interest in order to claim the privilege; all that is  
 12 required is proof that the employer's interest was one of the factors motivating his or her conduct or  
 13 advice"); *McCabe, McCabe v. General Foods*, 811 F.2d 1336, 1339 (9th Cir. 1987) (under  
 14 California law, where conduct is alleged to have been in the course of employment, manager's  
 15 privilege precludes individual liability, even if conduct was also motivated by bias or ill will).

16 31. California courts have applied the doctrine of managerial immunity to preclude  
 17 supervisor liability for other employment-related torts, where the complained-of conduct was  
 18 undertaken "in the course and scope of employment" or as "an agent of the employer." *See Becket v.*  
 19 *Welton Becket & Assocs.*, 39 Cal. App. 3d 815, 822-23 (1974) (demurrer without leave to amend  
 20 properly sustained; individual employees cannot be held liable for acts taken within the course and  
 21 scope of their authority because such acts are those of the company); *Wise v. Southern Pac. Co.*, 223  
 22 Cal. App. 2d 50, 72-73 (1963) (complaint failed to set forth facts sufficient to constitute a cause of  
 23 action where it alleged that at all times defendants were employees, agents and representatives of  
 24 their respective corporations, and alleged conduct within the course and scope of their employment);  
 25 *Mallard v. Boring*, 182 Cal. App. 2d 390, 393-94 (1960) (tort claim asserted against manager did not  
 26 state a cause of action where plaintiff alleged conduct within the course and scope of the manager's  
 27 authority, thereby invoking the managerial privilege).

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32. Upon finding that the manager's privilege applies, fraudulent joinder should be found. In *McCabe, supra*, the court applied the manager's privilege, found that the plaintiff failed to state a cause of action against the individual supervisors since they acted in their managerial capacity, and held that the individual defendants were fraudulently joined. 811 F.2d at 1339. Thus, removal based on diversity jurisdiction was proper. *Id.* at 1339.

33. Plaintiff's Complaint contains *no* allegation that the complained-of conduct occurred "*entirely* for the benefit" of Baker or Diaz. Indeed, Plaintiff alleges that Baker and Diaz acted in the course and scope of their employment. (Complaint, ¶¶ 5-6.) Therefore, Plaintiff cannot consistently allege that the conduct of Defendants Baker and Diaz was undertaken *exclusively* for their own benefit. Accordingly, the Manager's Privilege precludes Plaintiff's claims for harassment and IIED against Baker and Diaz.

**b. Workers' Compensation Exclusivity Bars Plaintiff's IIED Claim.**

34. Additionally, Plaintiff's IIED claims against Baker and Diaz fail because they are preempted under California Labor Code section 3601. Labor Code section 3601 provides that the exclusive remedy for an injured employee against any other employee of the employer acting within the scope of his employment is Workers' Compensation, unless the injury is caused by willful and unprovoked act of aggression or intoxication of the other employee. *See Kaccludis, supra*, 806 F. Supp. at 870 (California's Workers' Compensation system provides exclusive remedy for all claims).

35. The California Supreme Court recently rejected a plaintiff's IIED claim against a supervisor, where the supervisor's alleged conduct occurred in the workplace, in the course and scope of his employment as a supervisor. *Miklosy v. Regents of University of California*, 44 Cal. 4th 876, 902 (2008) ("the alleged wrongful conduct, however, occurred at the worksite, in the normal course of the employer-employee relationship, and therefore workers' compensation is plaintiffs' exclusive remedy for any injury that may have resulted.").

36. Plaintiff can avoid the preclusive effect of the workers' compensation exclusivity rule *only* if the cause of action alleged depends on a violation of an express statute or fundamental

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1 public policy. *Shoemaker v. Myers*, 52 Cal. 3d 1, 25 (1990); *Phillips v. Gemini Moving Specialists*,  
 2 63 Cal. App. 4th 563, 576-77 (1998).

3 37. The only statutory claims alleged in the Complaint stem from violations of  
 4 provisions of FEHA under California Government Code sections 12900 et seq. However, Baker and  
 5 Diaz may not be individually liable for either retaliation or discrimination. *See Jones v. Lodge At*  
 6 *Torrey Pines Partnership*, 42 Cal. 4th 1158, 1159, 1162 (2008); *Reno v. Baird*, 18 Cal. 4th 640, 645-  
 7 46 (1998). Since the Complaint does not allege that Plaintiff's purported emotional distress arises  
 8 from any other statutory, regulatory, or constitutional provision, his single claim against Baker and  
 9 Diaz is preempted by the Workers' Compensation Act.

10 38. Indeed, in *Cole v. Fair Oaks Fire Protection Dist.*, the California Supreme Court  
 11 held that claims for emotional distress caused during the normal course of the employment  
 12 relationship fall within the exclusive ambit of the Workers' Compensation Act:

13 . . . an employee suffering emotional distress . . . may not avoid the  
 14 exclusive provisions of the Labor Code by characterizing the  
 15 employer's decisions as manifestly unfair, *outrageous*, harassment, or  
*intended to cause emotional disturbance* resulting in disability.

16 43 Cal. 3d 148, 160 (1987) (emphasis added). Accordingly, Plaintiff's allegations regarding the  
 17 conduct of Defendants Baker and Diaz do not save his claims from the preclusive effect of the  
 18 workers' compensation exclusivity rule. Therefore, Plaintiff's IIED claims cannot be asserted  
 19 against the individual defendants.

20 **c. Plaintiff Fails to State a Cause of Action Against Baker and Diaz**  
 21 **for IIED.**

22 39. Plaintiff also cannot maintain his IIED claim against Baker and Diaz because he  
 23 fails to state a cause of action against them. To state a cause of action for IIED, Plaintiff must allege  
 24 the following elements: (1) extreme and outrageous conduct by Defendants; (2) with the intent to  
 25 cause, or reckless disregard of the probability of causing, emotional distress; (3) Plaintiff's suffering  
 26 severe or extreme emotional distress; and (4) actual and proximate causation of the emotional  
 27 distress by Defendants' extreme and outrageous conduct. *Christensen v. Superior Court*, 54 Cal.3d  
 28 868, 903 (1991); *Cole v. Fair Oaks Fire Protection Dist.*, 43 Cal.3d 148, 155 n.7 (1987).

40. To be outrageous, the conduct “must be so extreme as to exceed all bounds of that usually tolerated in a civilized community.” *Christensen*, 54 Cal.3d at 903; *Davidson v. City of Westminster*, 32 Cal.3d 197, 209 (1982). Further, “it is not enough the conduct be intentional and outrageous. It must be conduct directed at the plaintiff, or occur in the presence of a plaintiff of whom the defendant is aware.” *Christensen*, 54 Cal.3d at 903. Moreover, a plaintiff must plead facts demonstrating that the defendant’s conduct was not privileged. *Cantu v. Resolution Trust Corp.*, 4 Cal. App. 4th 857, 887 (1992). In his Complaint, Plaintiff alleges that Diaz discussed depositions in employment litigation (Complaint ¶ 45) and otherwise failed to act (Complaint ¶¶ 24, 46). Clearly, none of these allegations constitute extreme or outrageous conduct.

41. With respect to Baker, all of Plaintiff’s allegations involve personnel actions. Personnel actions more egregious than those pled by Plaintiff, including altering performance appraisals and terminating or laying off employees, *even if based on allegedly improper motives*, are not “extreme and outrageous” conduct. *Janken v. GM Hughes Electronics*, 46 Cal. App. 4th 55, 80 (1996). As the court in *Janken* observed, “Managing personnel is not outrageous conduct beyond the bounds of human decency, but rather conduct essential to the welfare and prosperity of society. A simple pleading of personnel management activity is insufficient to support a claim of [IIED], even if improper motivation is alleged.” *Id.*; *see also Buscemi v. McDonnell Douglas Corp.*, 736 F.2d 1348, 1352 (9th Cir. 1984) (termination of employment does not support an IIED claim); *Trerice v. Blue Cross of California*, 209 Cal.App.3d 878, 883-84 (1989) (same). Here, Plaintiff alleges that Baker: (1) pressured Plaintiff to give up his approved holiday vacation and suggested Plaintiff take September 11<sup>th</sup> as his holiday (Complaint ¶ 24); (2) asked Plaintiff for his driver’s license and green card but did not ask other employees for the same (Complaint ¶ 33); (3) monitored and scrutinized Plaintiff’s job performance and client relationships (Complaint ¶ 34); (4) threatened to give Plaintiff a write-up and subject him to disciplinary action if Plaintiff called in sick (Complaint ¶ 36); (5) pressured a co-worker to monitor and report any mistakes or flaws on Plaintiff’s route that could be used to discipline Plaintiff (Complaint ¶ 39); (6) followed Plaintiff on his route soliciting negative information about Plaintiff and scrutinizing all of Plaintiff’s work and at the end of the day wrote up Plaintiff for being absent (Complaint ¶ 39); and (7) changed Plaintiff’s



1 routes, taking away his most lucrative customers while Plaintiff was out on medical leave when  
 2 other employees who were of non-Middle Eastern decent and of non-Muslim faiths did not have  
 3 their routes significantly changed when out on medical leave (Complaint ¶ 48). However, none of  
 4 these personnel actions supports Plaintiff's claim of IIED.

5 42. Liability does not extend to "mere insults, indignities, threats, annoyances, petty  
 6 oppressions, or other trivialities." *Alcorn v. Anbro Engineering, Inc.*, 2 Cal.3d 493, 499 n.5 (1970).  
 7 As such, allegations that an employer verbally insulted and repeatedly harassed the plaintiff, directed  
 8 coworkers not to assist the plaintiff or made statements regarding the plaintiff's unsuitability for  
 9 employment have been held insufficient on demurrer to state an IIED claim. *See Ankeny v.*  
 10 *Lockheed Missiles & Space Co.*, 88 Cal.App.3d 531, 535-37 (1979) (verbal insults and repeated  
 11 harassment). Unlike *Alcorn*, where an IIED claim was found, Plaintiff does *not* allege that Baker or  
 12 Diaz shouted racial epithets or slurs at him, nor does he allege that he was subjected to seriously  
 13 threatening and extremely abusive language as the plaintiff was in *Newby v. Alto Riviera*  
 14 *Apartments*, 60 Cal.App.3d 288, 297-98 (1976). Plaintiff fails to show that Defendants Baker or  
 15 Diaz engaged in "extreme and outrageous" conduct. Plaintiff thus fails to state an IIED claim.

16 43. For the reasons set forth above, Baker's and Diaz's citizenship should be  
 17 disregarded for purposes of removal.

18 44. Does 1 through 50, inclusive, are wholly fictitious. Plaintiff's Complaint does  
 19 not set forth the identity or status of any said fictitious defendants, nor does it set forth any allegation  
 20 against any fictitious defendants. The citizenship of these doe defendants is to be disregarded for the  
 21 purpose of determining diversity jurisdiction, and therefore cannot destroy the diversity of  
 22 citizenship between the parties in this action. 28 U.S.C. Section 1441(a); *Newcombe v. Adolf Coors*  
 23 *Co.*, 157 F.3d 686, 690-91 (9th Cir. 1998).

#### 24 AMOUNT IN CONTROVERSY

25 45. Defendants deny the validity and merit of all of Plaintiff's claims, the legal  
 26 theories upon which they are purportedly based, and the claims for monetary and other relief that  
 27 flow from them. However, for purposes of removal only, and without conceding that Plaintiff is  
 28 entitled to any damages or penalties, assuming, arguendo, the truth of Plaintiff's allegations, it is

1 readily apparent that Plaintiff's claims establish an amount "in controversy" in excess of the  
2 jurisdictional minimum of \$75,000, as required by 28 U.S.C. § 1332.

3 46. Plaintiff's complaint is silent to the total amount of monetary relief claimed.  
4 However, failure of the Complaint to specify the total amount of monetary relief sought personally  
5 by Plaintiff does not deprive this Court of jurisdiction. *See White v. J.C. Penny Life Ins. Co.*, 861 F.  
6 Supp. 25, 26 (S.D. W. Va. 1994) (defendant may remove suit to federal court notwithstanding the  
7 failure of plaintiff to plead a specific dollar amount in controversy; if the rules were otherwise, "any  
8 Plaintiff could avoid removal simply by declining . . . to place a specific dollar claim upon its  
9 claim"). Defendants need only establish by a preponderance of evidence that Plaintiff's claims  
10 exceeds the jurisdictional minimum. *See Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404  
11 (9th Cir. 1996); *Singer v. State Farm Mutual Auto. Ins. Co.*, 116 F.3d 373, 376 (9th Cir. 1997).

12 47. Plaintiff filed his Complaint in state court as an unlimited jurisdiction matter  
13 (e.g., Plaintiff alleges that the amount in controversy exceeds \$25,000) (*See* Exhibit A, State Civil  
14 Case Cover Sheet attached to Complaint).

15 48. In his Complaint, Plaintiff's alleged damages include: unspecified amounts for  
16 general damages; special damages; compensatory damages, mental and emotional distress damages,  
17 and interest. (Exhibit A, Complaint ¶¶ 52, 53, 62, 63, 70, 71, 80, 81, 88, 89, 100, 101, 113, 114, 121,  
18 122, 128, 129, 135, 136, 145, 146, 149, 160 and Prayer for Relief).

19 49. Compensatory (actual) damages and special damages may be considered when  
20 determining the amount in controversy. *Bell v. Preferred Life Assur. Soc'y of Alabama*, 320 U.S.  
21 238, 241 (1943); *Bassett v. Toyota Motor Credit Corp.*, 818 F. Supp. 1462, 1464-65 (S.D. Ala.  
22 1993); *Richmond v. All State Insurance*, 897 F. Supp. 447, 450 (S.D. Cal. 1995) (general and special  
23 damages included in the amount in controversy).

24 50. Plaintiff was employed full-time as a Route Sales Representative at Earthgrains'  
25 San Leandro, California facility. (Snyder Decl. ¶ 3.) In 2012, Plaintiff earned a weekly base pay  
26 plus commissions resulting in average weekly earnings of \$1,154.85. (*Id.*) In his last full year of  
27 work in 2011, Plaintiff's gross annual income was \$70,670.65. (*Id.*) In 2010, his gross annual  
28 income was \$77,624.52, and in 2009, his gross annual income was \$85,798.45. (*Id.*) Thus,

1 Plaintiff's average annual wage for his most recent three full years of employment was \$78,031.21.  
2 (*Id.*) In addition, Plaintiff received medical insurance, retirement benefits and other valuable  
3 employment benefits. (*Id.*)

4 51. In addition to compensatory damages, Plaintiff seeks to recover punitive or  
5 exemplary damages. (Exhibit A, Complaint, ¶¶ 55, 65, 73, 83, 91, 103, 116, 123, 130, 138, 147,  
6 152, Prayer for Relief). The punitive damages sought by Plaintiff are properly included in  
7 computing the jurisdictional amount. *See Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir.  
8 2001). A removing defendant may demonstrate that it is "facially apparent" from the Complaint that  
9 the claims likely exceed the \$75,000 amount in controversy by showing that punitive damages have  
10 been pled. *White v. FCI USA, Inc.*, 319 F.3d 672, 675-76 (5th Cir. 2003)(finding that it was "facially  
11 apparent" that plaintiff's wrongful termination claim exceeded the \$75,0000 amount in controversy  
12 based on his "lengthy list of compensatory and punitive damages.").

13 52. Furthermore, Plaintiff seeks an award of attorneys' fees. (Exhibit A, Complaint  
14 ¶¶ 56, 66, 74, 84, 92, 104, 117, 124, 131, 139, 161 and Prayer for Relief.) It is well-settled that in  
15 determining whether a complaint meets the amount in controversy requirement, the Court should  
16 consider attorneys' fees. *See, e.g., Bell v. Preferred Life*, 320 U.S. 238, 240; *Goldberg v. C.P.C.*  
17 *Int'l, Inc.*, 678 F.2d 1365, 1367 (9th Cir. 1982) (attorneys' fees may be taken into account to  
18 determine jurisdictional amounts); *Galt G/S v. JSS Scandinavia*, 142 F. 3d 1150, 1155-1156 (9th Cir.  
19 1998) (prayer for attorneys' fees included in determining the amount in controversy where  
20 potentially recoverable by statute); *Brady v. Mercedes-Benz USA, Inc.*, 243 F. Supp. 2d 1004, 1010-  
21 11 (N.D. Cal. 2002) (court may estimate the amount of reasonable attorneys' fees likely to be  
22 recovered by a plaintiff if he were to prevail in determining whether amount in controversy exceeds  
23 \$75,000.00).

24 53. Based on the foregoing, Defendants have demonstrated by a preponderance of  
25 the evidence that the amount in controversy in this matter clearly exceeds the jurisdictional  
26 minimum of \$75,000.00.

27 54. For these reasons, this action is a civil action over which this Court has original  
28 jurisdiction pursuant to 28 U.S.C. section 1332, and which may be removed by Defendants to this



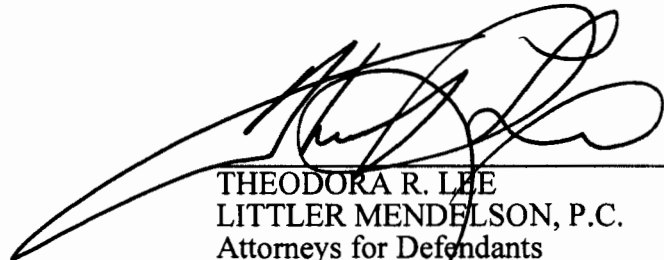
1 Court pursuant to 28 U.S.C. section 1441(a), in that is a civil action wherein the matter in  
 2 controversy exceeds the sum of \$75,000 exclusive of interest and costs, and is between citizens of  
 3 different states.

4 **NOTICE TO PLAINTIFF AND CLERK OF THE ALAMEDA COUNTY SUPERIOR**  
 5 **COURT**

6 55. Contemporaneously with the filing of this Notice of Removal in the United  
 7 States District Court for the Northern District of California, written notice of such filing will be  
 8 given by the undersigned to Plaintiff's counsel of record Christopher B. Dolan, Michael DePaul and  
 9 Ghazaleh Modarresi, The Dolan Law Firm, The Dolan Building, 1438 Market Street, San Francisco,  
 10 California 94102. In addition, a copy of Notice of Removal will be filed with the Clerk of the Court  
 11 for the Superior Court of California, County of Alameda.

12 WHEREFORE, having provided notice as is required by law, the above-entitled  
 13 action should be removed from the Superior Court for the County of Alameda to this Court.

14 Dated: May 24, 2013

15  
 16   
 17 THEODORA R. LEE  
 18 LITTLER MENDELSON, P.C.  
 19 Attorneys for Defendants  
 20 SARA LEE CORPORATION,  
 21 EARTHGRAINS BAKING COMPANIES,  
 22 INC., BIMBO BAKERIES USA, INC.,  
 23 MARTY BAKER and RIC DIAZ

24 Firmwide:120410266.1 046057.1060

## Exhibit A



ORIGINAL

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Christopher B. Dolan (SBN 165358) Michael DePaul (SBN 231641) Ghazaleh Modarresi (SBN 280339) THE DOLAN LAW FIRM 1438 Market Street, San Francisco, CA 94102 TELEPHONE NO.: (415) 421-2800 FAX NO.: (415) 421-2830		FOR COURT USE ONLY  <b>FILED</b> <b>ALAMEDA COUNTY</b>  <b>APR 04 2013</b> CLERK OF THE SUPERIOR COURT By <u>Ascher</u> Deputy	
ATTORNEY FOR (Name): <u>Plaintiff MOHAMED HUGAIS</u>			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Rene C. Davidson Courthouse			
CASE NAME: <u>Hugais v. Sara Lee Corp., et al.</u>			
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		<b>Complex Case Designation</b> <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: <b>RG13674251</b> JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:		
<b>Auto Tort</b> <input type="checkbox"/> Auto (12) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): Twelve
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: April 4, 2013  
 Michael DePaul (SBN 231641)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

#### NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

FAXED



## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

## Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (34)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (not asbestos or toxic/environmental) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

## Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (not medical or legal)  
Other Non-PI/PD/WD Tort (35)

## Employment

Wrongful Termination (36)  
Other Employment (15)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (not unlawful detainer or wrongful eviction)  
Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (not provisionally complex) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor  
Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

## Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (non-domestic relations)  
Sister State Judgment  
Administrative Agency Award (not unpaid taxes)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (not specified above) (42)  
Declaratory Relief Only  
Injunctive Relief Only (non-harassment)  
Mechanics Lien  
Other Commercial Complaint Case (non-tort/non-complex)  
Other Civil Complaint (non-tort/non-complex)

## Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (not specified above) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief from Late Claim  
Other Civil Petition



\*11298989\*

**FILED**  
ALAMEDA COUNTY

APR 04 2013

CLERK OF THE SUPERIOR COURT

By Asm Deputy

Christopher B. Dolan (SBN 165358)  
Michael DePaul (SBN 231641)  
Ghazaleh Modarresi (SBN 280339)  
**THE DOLAN LAW FIRM**  
The Dolan Building  
1438 Market Street  
San Francisco, CA 94102  
Tel: (415) 421-2800  
Fax: (415) 421-2830

Attorneys for Plaintiff  
MOHAMED HUGAIS

IN THE SUPERIOR COURT OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA  
UNLIMITED CIVIL JURISDICTION

MOHAMED HUGAIS,

Plaintiff,

SARA LEE CORPORATION, a Maryland  
corporation doing business in California;  
EARTHGRAINS BAKING COMPANY, INC., a  
Delaware corporation doing business in California;  
BIMBO BAKERIES USA, INC., a Delaware  
corporation doing business in California; MARTY  
BAKER, an individual; RIC DIAZ, an individual,  
and DOES 1 through 50, inclusive,

Defendants.

Case No: **RG13674251****COMPLAINT FOR DAMAGES FOR:**

1. Discrimination Based Upon Race and/or National Origin in Violation of FEHA (Cal. Gov. Code §§ 12900 et seq.);
2. Harassment Based Upon Race and/or National Origin in Violation of FEHA (Cal. Gov. Code §§ 12900 et seq.);
3. Discrimination Based Upon Religion in Violation of FEHA (Cal. Gov. Code §§ 12900 et seq.);
4. Harassment Based Upon Religion in Violation of FEHA (Cal. Gov. Code §§ 12900 et seq.);
5. Retaliation in Violation of FEHA (Cal. Gov. Code §§ 12900 et seq.);
6. Interference in Violation of California Family Rights Act (Cal. Gov. Code § 12900 et seq.);
7. Retaliation in Violation of California Family Rights Act (Cal. Gov. Code § 12900 et seq.);
8. Failure To Take Reasonable Steps To Prevent Harassment, Discrimination and Retaliation In Violation of FEHA (Cal. Gov. Code §§ 12900 et seq.);
9. Failure to Take Appropriate Remedial Measures In Violation of FEHA (Cal. Gov. Code §§ 12900 et seq.);
10. Retaliation in Violation of Labor Code § 6310;

11. Negligent Promotion and Hiring and Supervision;
12. Intentional Infliction Of Emotional Distress; and
13. Failure to Pay Wages Owed (Lab. Code §§ 204, 510, 1194 and 1198).

**JURY TRIAL DEMANDED**

**PRE-JUDGMENT INTEREST  
DEMANDED**

### COMPLAINT

Now comes **MOHAMED HUGAIS**, Plaintiff in this action, and files this Complaint, and further alleges as follows:

#### PARTIES TO THE CIVIL ACTION

1. Plaintiff **MOHAMED HUGAIS** (hereinafter "Plaintiff **HUGAIS**" or "Plaintiff") is a male adult natural person who at all times mentioned herein worked for Defendant **SARA LEE CORPORATION**, Defendant **EARTHGRAINS BAKING COMPANIES, INC.**, Defendant **BIMBO BAKERIES USA, INC.**, and/or **DOES 1-25** in the County of Alameda, State of California. Plaintiff **HUGAIS** is a Muslim of Arab descent and was born in Yemen.

2. Plaintiff is informed and believes, and thereon alleges that Defendant **SARA LEE CORPORATION**, (hereinafter "**SARA LEE**" or "Defendant") and/or **DOES 1-25** was at all times material to this Complaint the employer of Plaintiff and of Defendants **MARTY BAKER**, **RIC DIAZ**, and/or **DOES 26-50**, and was doing business in the State of California, County of Alameda, and is an entity subject to suit before this Court.

3. Plaintiff is informed and believes, and thereon alleges that Defendant **EARTHGRAINS BAKING COMPANIES, INC.**, (hereinafter "**EARTHGRAINS**" or "Defendant") and/or **DOES 1-25**, was at all times material to this Complaint the employer of Plaintiff and of Defendants **MARTY BAKER**, **RIC DIAZ**, and/or **DOES 26-50**, and was doing business in the State of California, County of Alameda, and is an entity subject to suit before this Court.

4. Plaintiff is informed and believes, and thereon alleges that Defendant **BIMBO BAKERIES**

**THE  
DOLAN  
LAW FIRM**

3000 LAWYERS  
THE DOLAN BUILDING  
1414 MARKET STREET  
SAN FRANCISCO  
CA  
94102  
TEL: (415) 421-2800  
FAX: (415) 421-2801



1 USA, INC., (hereinafter "BIMBO" or "Defendant") and/or DOES 1-25, was at all times material to this  
 2 Complaint the employer of Plaintiff and of Defendants MARTY BAKER, RIC DIAZ, and/or DOES 26-  
 3 50, and was doing business in the State of California, County of Alameda, and is an entity subject to suit  
 4 before this Court.

5 5. Defendant MARTY BAKER (hereinafter "Defendant BAKER") is an adult natural person  
 6 who Plaintiff is informed and believes and thereby alleges is a resident of the State of California, County  
 7 of Alameda, and is therefore subject to the jurisdiction of this Court. Plaintiff is informed and believes,  
 8 and thereon alleges that at all relevant times, Defendant BAKER was one of Plaintiff's supervisors and/or  
 9 managing agents of Defendants, acting in the course and scope of his employment with Defendants and/or  
 10 DOES 1-25, with supervisory authority over Plaintiff and/or DOES 26-50.

11 6. Defendant RIC DIAZ (hereinafter "Defendant DIAZ") is an adult natural person who Plaintiff  
 12 is informed and believes and thereby alleges is a resident the State of California, County of Alameda, and  
 13 is therefore subject to the jurisdiction of this Court. Plaintiff is informed and believes and thereon alleges  
 14 that at all relevant times, Defendant DIAZ was Defendants' Manager of Human Resources, was one of  
 15 Plaintiff's supervisors and/or managing agents of Defendants, acting in the course and scope of his  
 16 employment with Defendants and/or DOES 1-25, with supervisory authority over Plaintiff and/or DOES  
 17 26-50.

18 7. Defendants DOES 1-25 are herein sued under fictitious names. Their true names and  
 19 capacities are unknown to Plaintiff. Plaintiff is informed and believes and hereon alleges that DOES 1-25  
 20 are business entities of unknown form who were the employers of Plaintiff and/or Defendants MARTY  
 21 BAKER and RIC DIAZ, and/or DOES 26-50. Plaintiff is informed and believes and thereon alleges that  
 22 DOES 26-50 were the employees, officers, directors, managing agents, and/or supervisors of Defendants  
 23 MARTY BAKER, RIC DIAZ, and/or DOES 1-25 who were acting within the scope and course of their  
 24 employment and authority at all times relevant to this Complaint. Plaintiff alleges that DOES 26-50  
 25 exercised supervisory authority over him and his day-to-day job duties within the scope and course of his  
 26 employment.

27 8. The true names and capacities, whether individual, corporate, associate, or otherwise, of DOES  
 28 1-50, inclusive, are unknown to Plaintiff, who therefore sues the DOE defendants by fictitious names.

THE  
DOLAN  
LAW FIRM

1001 MARKET STREET  
THE DOLAN BUILDING  
1439 MARKET STREET  
SAN FRANCISCO,  
CA  
94102  
TEL: (415) 421-2800  
FAX: (415) 421-2830

1 Plaintiff will amend this complaint to show their true names and capacities when they have been  
2 ascertained.

3 9. Plaintiff is informed and believes and thereon alleges that there exists, and, at all times relevant  
4 to this Complaint, existed a unity of interests between certain of the Defendants such that any individuality  
5 and separateness between these certain Defendants has ceased, and those certain Defendants are the alter  
6 ego of the other certain Defendants and exerted control over each other. Adherence to the fiction of the  
7 separate existence of these certain Defendants as an entity distinct from other certain Defendants will  
8 permit an abuse of the corporate privilege and would sanction fraud and /or promote injustice.

9 10. Plaintiff is informed and believes and thereon alleges that at all times mentioned in this  
10 Complaint, Defendants were the agents and employees of their co-defendants, and in doing the things  
11 alleged in this Complaint were acting within the course and scope of such agency and employment and  
12 acted in such a manner as to ratify the conduct of their co-Defendants..

### 13 VENUE AND JURISDICTION

14 11. Venue is proper because Plaintiff is informed and believes and thereon alleges that  
15 Defendants SARA LEE, EARTHGRAINS, BIMBO, MARTY BAKER, RIC DIAZ, and/or DOES 1-25  
16 were doing business in the County of Alameda, State of California, that the relevant actions set forth  
17 herein occurred in the County of Alameda, and that Alameda County is where Plaintiff's personnel file  
18 and Defendants' records relevant to the alleged unlawful practices are maintained and administered.

19 12. Plaintiff HUGAIS is a Muslim male who was born in Yemen and is, therefore, a member of  
20 a protected class under the Fair Employment and Housing Act ("FEHA"), Government Code §12900 et  
21 seq., and is protected from discrimination and harassment, as well as retaliation, by his employer.

22 13. At all times mentioned herein, Defendants SARA LEE, EARTHGRAINS, BIMBO and/or  
23 DOES 1-25 were "covered employers" under the California Family Rights Act ("CFRA"), as they  
24 employed 50 or more people within a 75 mile radius to perform services for a salary or wage.

25 14. At all times mentioned herein, Plaintiff was an "eligible employee" under the California  
26 Family Rights Act ("CFRA"), as he had been employed by Defendants SARA LEE, EARTHGRAINS,  
27 BIMBO and/or DOES 1-25 for at least 12 months and had been employed for over 1250 hours of service  
28 in the 12 month period before he requested and/or took a medical leave from his employment.

15. At all times mentioned herein, California Government Code Section 12900, et seq., was in full force and effect, and was binding upon Defendants SARA LEE, EARTHGRAINS, BIMBO, MARTY BAKER, RIC DIAZ, and DOES 1-25.

16. Plaintiff is informed, believes, and thereon alleges that Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25 are employers subject to suit under the FEHA in that Defendants are business organizations with 5 or more employees doing business in the State of California.

17. On or about April 9, 2012, and within the time provided by law, Plaintiff filed verified charges of discrimination, harassment and retaliation with the California Department of Fair Employment and Housing ("DFEH") against Defendants SARA LEE, EARTHGRAINS, BIMBO, MARTY BAKER, and RIC DIAZ, and received a "Right-to-Sue" notice on the same date. On or about April 10, 2012, Plaintiff timely served his DFEH Complaint and Right-to-Sue notice on Defendants via Certified U.S. Mail. Plaintiff now timely files this action.

18. Subject matter in this action is properly heard in this Court, as the action incorporates an amount in controversy as set forth in the Complaint which exceeds \$25,000.00.

#### FACTS COMMON TO ALL CAUSES OF ACTION

19. Plaintiff HUGAIS is a Muslim male of Arab descent born in Yemen and a member of a protected classification based on his race, national origin, and religion.

20. On or about November 4, 2007, Defendants hired Plaintiff HUGAIS as a salesperson based in San Leandro. As an salesperson, Plaintiff was responsible for ordering and delivering SARA LEE, EARTHGRAINS, and/or BIMBO products to various retail stores in the San Francisco Bay Area. Plaintiff operated a SARA LEE, EARTHGRAINS, and/or BIMBO vehicle, stocked SARA LEE, EARTHGRAINS, and/or BIMBO products on location for Defendants' vendors, removed expired products, and recorded and worked to ensure against product spoliation. Plaintiff also maintained product inventories and loaded and unloaded his truck at the SARA LEE, EARTHGRAINS, and/or BIMBO depot in San Leandro at the end of his shift.

21. Throughout his employment, Plaintiff worked long hours to complete his job responsibilities. Despite the long hours required for the completion of his job, Defendants failed and/or refused to compensate Plaintiff for all hours worked.



22. Throughout the course of Plaintiff's employment, Defendants SARA LEE, EARTHGRAINS, BIMBO, BAKER, DIAZ, and/or DOES 26-50 subjected Plaintiff to unwelcome and offensive race, national origin, and religious based harassment, which he protested and opposed. Plaintiff has been repeatedly mocked and ridiculed because of his race, religion, and/or national origin, and he has been retaliated against for opposing such conduct and making repeated workplace complaints. Moreover, the race-based conduct Plaintiff has complained about has been engaged in and/or witnessed by Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25 managers, supervisors, and/or managing agents including DIAZ, a Human Resources Manager, and BAKER, one of Plaintiff's direct supervisors.

23. For example, during his employment, Plaintiff's coworker stated to him, "All fucking Arabs do nothing but ride fucking camels," in front of both coworkers and Defendants' supervisors and/or managing agents. Another coworker of Plaintiff said to Plaintiff, "When you Muslims die, don't you get 67 virgins? I can see why the suicide bombers do it," and then walked away laughing. These statements were unwelcome, offensive and harassing to Plaintiff, which Plaintiff protested and opposed.

24. In or around May 2011, Defendant BAKER pressured Plaintiff to give up his approved holiday vacation. Plaintiff explained to Defendant BAKER that he had requested the time off to care for his son who suffers from a disabling medical condition. When Plaintiff explained to Defendant BAKER that Plaintiff required his time off, Defendant BAKER challenged Plaintiff's right to leave and told Plaintiff to take September 11th as his holiday, referring to the terrorist attacks at the World Trade Center. Plaintiff complained about this unwelcome and offensive comment. This offensive and unwelcome national origin and race based comment was made in front of Defendant DIAZ, Defendants' Human Resources Manager and a managing agent of Defendants. Defendant DIAZ failed to take any remedial action and/or ratified the conduct.

25. Immediately after this incident, Plaintiff contacted his union representative and made a formal complaint opposing the unlawful conduct. A few days later, Plaintiff's union representative contacted Plaintiff and advised Plaintiff that he had spoken to Defendant BAKER and told Plaintiff that Defendant BAKER 'did not mean' what he had said. Despite Plaintiff's complaints, Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25 failed and/or refused to conduct a good faith investigation and/or to take any remedial measures to protect Plaintiff in his job.

1           26. In or around May 2011, Plaintiff's supervisor told Plaintiff that Plaintiff should order a new  
2 drink at the bar called an Osama Bin Laden. Plaintiff asked his supervisor what he meant by that  
3 comment, and his supervisor replied, "A few shots and some water sprinkles," and walked away laughing.  
4 This statement was unwelcome, offensive and harassing to Plaintiff, which Plaintiff protested and  
5 opposed. Despite Plaintiff's complaints, Defendants failed and/or refused to take any remedial measures  
6 to protect Plaintiff in his job.

7           27. During Plaintiff's employment, another one of Plaintiff's coworkers repeatedly made unlawful  
8 and offensive racial slurs regarding one of Defendants' Middle Eastern customers. On one occasion, for  
9 example, Plaintiff's coworker stated that the customer was 'a typical Arab claiming he can't pay his bill  
10 even though he has all this money.' Despite Plaintiff's opposition to this unwelcome and offensive  
11 conduct, Defendants failed and/or refused to take any remedial measures to protect Plaintiff in his job.

12           28. In or around late October 2011, another one of Plaintiff's coworkers told Plaintiff that he had  
13 seen a bunch of Muslims praying at PetCo and that Plaintiff should go pray with them. Plaintiff's  
14 coworker also told Plaintiff that Muslims pray anywhere they find. Despite Plaintiff's opposition to such  
15 unwelcome and offensive statements, Defendants failed to take any remedial measures to protect Plaintiff  
16 in his job.

17           29. On or around November 1, 2011, Plaintiff wrote a letter to Defendant SARA LEE,  
18 EARTHGRAINS, BIMBO, and/or DOES 1-25's Human Resources department opposing the offensive  
19 race, national origin, and religious based conduct he had been subjected to. In his letter, Plaintiff  
20 described the ongoing unwelcome and offensive harassment he had suffered on account of his religion,  
21 race, and national origin in full view of Defendant's supervisors and/or managing agents. Defendants  
22 SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25 failed and/or refused to conduct a good faith  
23 investigation and/or to take any remedial measures to protect Plaintiff in his job.

24           30. On or around November 1, 2011, Plaintiff also wrote a letter to Defendant SARA LEE,  
25 EARTHGRAINS, BIMBO, and/or DOES 1-25's Human Resources department opposing the unsafe  
26 working conditions in which he was forced to work. In his letter, Plaintiff described the unsafe conditions  
27 of the depot and the multiple collisions and near accidents that had occurred in the past several months.  
28 Plaintiff explained that many complaints had been made to management, to no avail, and that he and other

1 employees were putting themselves in danger everyday due to the unsafe working conditions. Defendants  
 2 SARA LEE, EARTHGRAINS, BIMBO and/or DOES 1-25 failed and/or refused to conduct a good faith  
 3 investigation and/or to take any remedial measures to protect Plaintiff in his job.

4 31. In or around early November 2011, Human Resources acknowledged receipt of Plaintiff's  
 5 written workplace complaints, yet failed and/or refused to conduct a good faith investigation and/or to take  
 6 any remedial measures to address Plaintiff's complaints or protect Plaintiff from further unlawful conduct.

7 32. For approximately four years, Plaintiff worked without incident, successfully performing his  
 8 job duties and earning positive conduct and performance ratings. Immediately following his various  
 9 complaints, however, Defendants subjected Plaintiff to unwarranted job scrutiny and unjustified and  
 10 retaliatory disciplinary action. Instead of taking prompt corrective action and/or remedial measures,  
 11 Defendants further harassed and retaliated against Plaintiff when he complained and/or asserted his  
 12 employment rights. Defendants also subjected Plaintiff to heightened and unwarranted job scrutiny by  
 13 actually searching for and/or contriving performance issues to discipline and/or fire Plaintiff. Examples  
 14 of such further harassment, retaliation, and retaliatory discipline include but are not limited to the  
 15 following incidents:

16 33. On or around November 4, 2011, Defendant BAKER harassed Plaintiff regarding his  
 17 employment status by asking him for his driver's license and green card. Plaintiff is informed and  
 18 believes and thereon alleges that Defendant BAKER did not ask any other employees to produce a driver's  
 19 license or green card.

20 34. Plaintiff is informed and believes and thereon alleges that on or around November 4, 2011,  
 21 Defendant BAKER began and/or continued to surveil Plaintiff and monitor and scrutinize his job  
 22 performance and client relationships to solicit negative information regarding Plaintiff and in an apparent  
 23 search for some cause to discipline Plaintiff.

24 35. On or around November 5, 2011, while at work, Plaintiff began hyperventilating and fell to  
 25 the floor. A coworker seeing the incident yelled out, "Gaddafi goes down." While Plaintiff protested and  
 26 opposed this unwelcome and offensive statement, Defendants failed to take any remedial action.

27 36. On or around November 6, 2011, Plaintiff called Defendant BAKER and asked if there was  
 28 anyone who could fill in for him so that he could obtain medical treatment to evaluate the incident from



1 the previous day. Despite notice of Plaintiff's disabling health condition, Defendant BAKER threatened  
 2 to give Plaintiff a write-up and subject him to disciplinary action if Plaintiff called in sick that day. Based  
 3 on his approximate four year employment with Defendants, Plaintiff observed and/or was advised that  
 4 other employees who were of non-Middle Eastern descent and of non-Muslim faiths were not threatened  
 5 with disciplinary action for seeking treatment for a disabling health condition.

6 37. In or around mid-November 2011, Plaintiff complained to Defendant BAKER that his co-  
 7 workers were continuing to subject him to offensive and unwanted harassing race, national origin, and/or  
 8 religious conduct. Defendants BAKER, SARA LEE, EARTHGRAINS, BIMBO and/or DOES 1-25  
 9 ignored Plaintiff's complaints and failed to take remedial action to protect Plaintiff in his job.

10 38. On or around November 23, 2011, Plaintiff reached for a donut at work and a coworker yelled  
 11 out, "Don't eat that, that's against your religion." This offensive comment was made in front of  
 12 Defendant BAKER, Plaintiff's supervisor and/or Defendants' managing agent. This statement was  
 13 unwelcome, offensive and harassing to Plaintiff. Despite Plaintiff's complaints, Defendant BAKER  
 14 walked away without saying anything to Plaintiff's coworker.

15 39. On or around December 6, 2011, Plaintiff was advised by a coworker that Defendant BAKER  
 16 was pressuring him to monitor and report any mistakes or flaws on Plaintiff's route that could be used to  
 17 discipline Plaintiff. Plaintiff was advised by his coworker that Defendant BAKER called him all  
 18 throughout the day and kept asking if he had found anything that Defendants SARA LEE,  
 19 EARTHGRAINS, BIMBO and/or DOES 1-25 could use to discipline Plaintiff. The same day, Defendant  
 20 BAKER harassed Plaintiff by following Plaintiff on his route soliciting negative information about  
 21 Plaintiff and scrutinizing all of Plaintiff's work. At the end of the day, Defendant BAKER called Plaintiff  
 22 into Defendant's office and wrote Plaintiff up for being absent from work one day in the fall of 2011 while  
 23 on Family Medical Leave Act ("FMLA") leave to care for his son who suffers from a disabling medical  
 24 condition.

25 40. In the fall of 2011, Defendants SARA LEE, EARTHGRAINS, BIMBO and/or DOES 1-25  
 26 took repeated disciplinary action against Plaintiff for taking FMLA leave to care for his son who  
 27 Defendants knew suffered from a serious and disabling medical condition. Despite Plaintiff's  
 28 discrimination and retaliation complaints regarding his leave entitlements, Defendants failed and/or

1 refused to take remedial action.

2 41. In or around December 2011, Plaintiff was subjected to further unwarranted disciplinary  
3 action for incidental and minor ministerial issues, and Plaintiff was repeatedly accused of performance  
4 deficiencies and/or misconduct, such as not turning on his display tracker and even product theft.

5 42. Throughout 2011, Plaintiff was repeatedly called "Ali Baba" and "Momo the Gaddafi" by his  
6 coworkers. Despite Plaintiff's complaints of race, national origin, and religious based harassment and  
7 discrimination, Defendants failed to take any corrective action and/or remedial measures to protect  
8 Plaintiff.

9 43. On or around December 22, 2011, one of Plaintiff's coworkers showed Plaintiff pictures of  
10 Osama Bin Laden's body spattered with bullet holes while the coworker laughed and showed other  
11 coworkers the picture. Plaintiff was shocked and offended by this ongoing race, national origin, and/or  
12 religious based conduct.

13 44. On or around January 13, 2012, Plaintiff again submitted a written complaint to Defendants'  
14 Human Resources department. At this time, Plaintiff again protested and opposed the unlawful race,  
15 national origin, and/or religious based conduct and notified Defendants that the unwelcome and offensive  
16 conduct was continuing unabated. Plaintiff further opposed the retaliation to which he was being  
17 subjected since he had first protested Defendants unlawful harassment based on his race, national origin,  
18 and religion. Again, despite Plaintiff's complaints, Defendants failed and/or refused to take any  
19 preventive or remedial measures to protect Plaintiff in his job.

20 45. Shortly after Plaintiff's January 2012 letter, Defendants SARA LEE, EARTHGRAINS,  
21 BIMBO and/or DOES 1-25 convened a pre-shift meeting to discuss employment issues with Plaintiff and  
22 his coworkers. During a 15-minute presentation, instead of addressing the working conditions that had  
23 been the subject of Plaintiff's ongoing complaints, Defendant DIAZ focused his presentation on the role  
24 of depositions in employment lawsuits. Defendant DIAZ advised the group that they would not want to  
25 be deposed, stating that 'depositions are not fun.' Defendant DIAZ elaborated that depositions are  
26 stressful. He then emphasized that attorneys can explore details of person's private life. Given Plaintiff's  
27 recent workplace complaints, Plaintiff understood these comments to be directed at him to discourage him  
28 from making any additional workplace complaints.

1 46. On or around February 13, 2012, months after Plaintiff's first written complaint, Defendant  
 2 DIAZ finally responded to Plaintiff's discrimination and harassment complaints. Despite being the  
 3 subject of Plaintiff's complaints and witnessing and/or ratifying unlawful conduct, Defendant DIAZ  
 4 advised Plaintiff that Defendants were "unable to confirm that any inappropriate behavior or conduct had  
 5 occurred."

6 47. Plaintiff was shocked at Defendants SARA LEE, EARTHGRAINS, BIMBO and/or DOES  
 7 1-25 letter of February 13, 2012, particularly because Plaintiff was never interviewed as part of any  
 8 "investigation", Plaintiff was unaware that any of his coworkers were interviewed, and Defendant DIAZ  
 9 was the subject of Plaintiff's complaint and had witnessed, participated in and/or ratified prior harassing  
 10 and discriminatory conduct. Plaintiff made a further complaint to Defendants SARA LEE,  
 11 EARTHGRAINS, BIMBO and/or DOES 1-25 that Defendants had not conducted a good faith  
 12 investigation regarding Plaintiff's discrimination and harassment complaints, and that the offensive  
 13 conduct was continuing.

14 48. In approximately June 2012, Plaintiff injured his foot and needed surgery. Plaintiff was  
 15 placed on a doctor certified medical leave of absence through approximately April 2013. In January 2013,  
 16 Plaintiff spoke with Defendant BAKER and learned that Defendant BAKER had changed most of  
 17 Plaintiff's routes, taking away his most lucrative customers, as commissions are influenced by delivery  
 18 route. Based on his approximate four year employment with Defendants, Plaintiff observed and/or was  
 19 advised that other employees who were of non-Middle Eastern descent and of non-Muslim faiths, who  
 20 were out on medical leave for as long as two years, did not have their routes significantly changed.

21  
 22 **FIRST CAUSE OF ACTION**  
 23 **DISCRIMINATION BASED ON RACE AND/OR NATIONAL ORIGIN IN**  
 24 **VIOLATION OF FEHA**  
 25 **(CAL. GOV. CODE § 12900 et seq.)**  
 26 **(Against Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25)**

27 49. By this reference, Plaintiff hereby incorporates each and every paragraph set forth above  
 28 as though fully set forth at this place.

50. Plaintiff is informed and believes, and thereon alleges that he was discriminated in the



1 terms and conditions of his employment and/or was subjected to a workplace environment permeated  
 2 with harassment, as outlined above, on the basis of his race and/or national origin, as set forth herein,  
 3 in violation of the FEHA.

4 51. Plaintiff is informed and believes and thereon alleges that Defendants SARA LEE,  
 5 EARTHGRAINS, BIMBO, and/or DOES 1-25 willfully and/or with reckless indifference violated  
 6 California Government Code sections 12900 et seq., and discriminated against Plaintiff as outlined  
 7 above on the basis of his race and/or national origin. Such discrimination has resulted in damage and  
 8 injury to Plaintiff as alleged herein.

9 52. As a direct and proximate result of Defendants SARA LEE, EARTHGRAINS, BIMBO,  
 10 and/or DOES 1-25's unlawful conduct, Plaintiff has suffered special damages including but not limited  
 11 to past and future loss of income, benefits, and other damages to be proven at time of trial.

12 53. As a direct and proximate result of Defendants SARA LEE, EARTHGRAINS, BIMBO,  
 13 and/or DOES 1-25's unlawful conduct, Plaintiff has suffered general damages including but not  
 14 limited to shock, embarrassment, physical distress and injury, humiliation, emotional distress, stress  
 15 and other damages to be proven at the time of trial.

16 54. The unlawful conduct alleged above was engaged in by the officers, directors, supervisors  
 17 and/or managing agents of Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25  
 18 who were acting at all times relevant to this Complaint within the scope and course of their  
 19 employment. Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25 are, therefore,  
 20 liable for the conduct of said agents and employees under the Doctrine of Strict Liability.

21 55. Defendants and/or DOES 1-50 committed the acts herein alleged maliciously, fraudulently  
 22 and oppressively in conscious disregard for Plaintiff's rights and such acts were committed by and/or  
 23 ratified by, and or were committed with the knowledge of employees' lack of fitness in the workplace  
 24 but were allowed to proceed, and/or were ratified by officers, directors, and/or managing agents of  
 25 Defendants and/or DOES 1-50. Plaintiff is, therefore, entitled to recover punitive damages against  
 26 Defendants and/or DOES 1-50 in an amount according to proof at trial.

27 56. As a result of the conduct of Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or  
 28 DOES 1-25, Plaintiff was forced to retain an attorney in order to protect his rights. Accordingly,

THE  
DOLAN  
LAW FIRM

1000 LAYTON  
THE DOLAN BUILDING  
1430 MARKET STREET  
SAN FRANCISCO,  
CA  
94102  
TEL: (415) 421-2800  
FAX: (415) 421-2800

1 Plaintiff seeks the reasonable attorneys' fees and costs incurred in this litigation in an amount  
2 according to proof at trial.

3 WHEREFORE, Plaintiff prays for judgment as set forth below.  
4

5 **SECOND CAUSE OF ACTION**  
6 **HARASSMENT BASED ON RACE AND/OR NATIONAL ORIGIN IN**  
7 **VIOLATION OF FEHA**  
8 **(CAL. GOV. CODE § 12900 et seq.)**  
9 **(Against All Defendants and/or DOES 1-50)**

10 57. By this reference, Plaintiff hereby incorporates each and every paragraph set forth above  
11 as though fully set forth at this place.

12 58. Plaintiff is informed and believes, and thereon alleges that he was harassed in the terms  
13 and conditions of his employment and/or was subjected to a workplace environment permeated with  
14 harassment, as outlined above, on the basis of his race and/or national origin, as set forth herein, in  
15 violation of the FEHA.

16 59. The above conduct was so severe and/or pervasive caused Plaintiff to perceive his work  
17 environment as intimidating, hostile, or offensive work environment and created a hostile work  
18 environment for Plaintiff, and a reasonable person in Plaintiff's position would perceive the work  
19 environment as hostile.

20 60. Plaintiff protested and opposed the harassing conduct, but the harassment continued.  
21 Defendants failed to conduct a prompt and thorough good faith investigation and/or to take any  
22 remedial measures.

23 61. Plaintiff is informed and believes and thereon alleges that Defendants and/or Does 1-50  
24 willfully and/or with reckless indifference violated California Government Code sections 12900 *et*  
25 *seq.* and harassed Plaintiff as outlined above on the basis of his race and/or national origin. Such  
26 harassment has resulted in damage and injury to Plaintiff as alleged herein.

27 62. As a direct and proximate result of the unlawful conduct of Defendants and Does 1-50,  
28 Plaintiff has suffered special damages including but not limited to past and future loss of income,  
benefits, and other damages to be proven at time of trial.

63. As a direct and proximate result of the unlawful conduct of Defendants and Does 1-50,

1 Plaintiff has suffered general damages including but not limited to shock, embarrassment, physical  
 2 distress and injury, humiliation, emotional distress, stress and other damages to be proven at the time  
 3 of trial.

4 64. The unlawful conduct alleged above was engaged in by the officers, directors, supervisors,  
 5 and/or managing agents of Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or Does 1-25 who  
 6 were acting at all times relevant to this Complaint within the scope and course of their employment.  
 7 Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or Does 1-25 are, therefore, liable for the  
 8 conduct of said agents and employees under the Doctrine of Strict Liability.

9 65. Defendants and/or Does 1-50 committed the acts herein alleged maliciously, fraudulently  
 10 and oppressively in conscious disregard for Plaintiff's rights and such acts were committed by and/or  
 11 ratified by, and/or were committed with the knowledge of employees' lack of fitness in the workplace  
 12 but were allowed to proceed, and/or were ratified by officers, directors, and/or managing agents of  
 13 Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or Does 1-25. Plaintiff is, therefore, entitled  
 14 to recover punitive damages against Defendants and/or Does 1-50 in an amount according to proof at  
 15 trial.

16 66. As a result of the conduct of Defendants and/or Does 1-50, Plaintiff was forced to retain  
 17 an attorney in order to protect his rights. Accordingly, Plaintiff seeks the reasonable attorneys' fees  
 18 and costs incurred in this litigation in an amount according to proof at trial.

19 WHEREFORE, Plaintiff prays for judgment as set forth below.

20 **THIRD CAUSE OF ACTION**  
 21 **DISCRIMINATION BASED ON RELIGION IN**  
 22 **VIOLATION OF FEHA**  
 23 **(CAL. GOV. CODE § 12900 et seq.)**

(Against Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25)

24 67. By this reference, Plaintiff hereby incorporates each and every paragraph set forth above  
 25 as though fully set forth at this place.

26 68. Plaintiff is informed and believes and thereon alleges that he was discriminated against in  
 27 the terms and conditions of his employment, as outlined above, on the basis of his religion as set forth  
 28 herein, in violation of the FEHA.

69. Plaintiff is informed and believes and thereon alleges that Defendants SARA LEE,



1 EARTHGRAINS, BIMBO, and/or DOES 1-25 willfully and/or with reckless indifference violated  
 2 California Government Code sections 12900 et seq., and discriminated against Plaintiff as outlined  
 3 above on the basis of his religion. Such discrimination has resulted in damage and injury to Plaintiff  
 4 as alleged herein.

5 70. As a direct and proximate result of Defendants SARA LEE, EARTHGRAINS, BIMBO,  
 6 and/or DOES 1-25's unlawful conduct, Plaintiff has suffered special damages including but not limited  
 7 to past and future loss of income, benefits, and other damages to be proven at time of trial.

8 71. As a direct and proximate result of Defendants SARA LEE, EARTHGRAINS, BIMBO,  
 9 and/or DOES 1-25's unlawful conduct, Plaintiff has suffered general damages including but not  
 10 limited to shock, embarrassment, physical distress and injury, humiliation, emotional distress, stress  
 11 and other damages to be proven at the time of trial.

12 72. The unlawful conduct alleged above was engaged in by the officers, directors, supervisors  
 13 and/or managing agents of Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25  
 14 who were acting at all times relevant to this Complaint within the scope and course of their  
 15 employment. Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25 are, therefore,  
 16 liable for the conduct of said agents and employees under the Doctrine of Strict Liability.

17 73. Defendants and/or DOES 1-50 committed the acts herein alleged maliciously, fraudulently  
 18 and oppressively in conscious disregard for Plaintiff's rights and such acts were committed by and/or  
 19 ratified by, and or were committed with the knowledge of employees' lack of fitness in the workplace  
 20 but were allowed to proceed, and/or were ratified by officers, directors, and/or managing agents of  
 21 Defendants and/or DOES 1-50. Plaintiff is, therefore, entitled to recover punitive damages against  
 22 Defendants and/or DOES 1-50 in an amount according to proof at trial.

23 74. As a result of the conduct of Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or  
 24 DOES 1-25, Plaintiff was forced to retain an attorney in order to protect his rights. Accordingly,  
 25 Plaintiff seeks the reasonable attorneys' fees and costs incurred in this litigation in an amount  
 26 according to proof at trial.

27 WHEREFORE, Plaintiff prays for judgment as set forth below.

28 ///

**FOURTH CAUSE OF ACTION  
HARASSMENT BASED ON RELIGION IN  
VIOLATION OF FEHA  
(CAL. GOV. CODE § 12900 et seq.)  
(Against All Defendants and/or DOES 1-50)**

75. By this reference, Plaintiff hereby incorporates each and every paragraph set forth above as though fully set forth at this place.

76. Plaintiff is informed and believes, and thereon alleges that he was harassed in the terms and conditions of his employment and/or was subjected to a workplace environment permeated with harassment, as outlined above, on the basis of his religion, as set forth herein, in violation of the FEHA.

77. The above conduct was so severe and/or pervasive caused Plaintiff to perceive his work environment as intimidating, hostile, or offensive work environment and created a hostile work environment for Plaintiff, and a reasonable person in Plaintiff's position would perceive the work environment as hostile.

78. Plaintiff protested and opposed the harassing conduct, but the harassment continued. Defendants failed to conduct a prompt and thorough good faith investigation and/or to take any remedial measures.

79. Plaintiff is informed and believes and thereon alleges that Defendants and/or Does 1-50 willfully and/or with reckless indifference violated California Government Code sections 12900 *et seq.* and harassed Plaintiff as outlined above on the basis of his religion. Such harassment has resulted in damage and injury to Plaintiff as alleged herein.

80. As a direct and proximate result of the unlawful conduct of Defendants and Does 1-50, Plaintiff has suffered special damages including but not limited to past and future loss of income, benefits, and other damages to be proven at time of trial.

81. As a direct and proximate result of the unlawful conduct of Defendants and Does 1-50, Plaintiff has suffered general damages including but not limited to shock, embarrassment, physical distress and injury, humiliation, emotional distress, stress and other damages to be proven at the time of trial.

82. The unlawful conduct alleged above was engaged in by the officers, directors, supervisors,

1 and/or managing agents of Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or Does 1-25 who  
 2 were acting at all times relevant to this Complaint within the scope and course of their employment.  
 3 Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or Does 1-25 are, therefore, liable for the  
 4 conduct of said agents and employees under the Doctrine of Strict Liability.

5 83. Defendants and/or Does 1-50 committed the acts herein alleged maliciously, fraudulently  
 6 and oppressively in conscious disregard for Plaintiff's rights and such acts were committed by and/or  
 7 ratified by, and/or were committed with the knowledge of employees' lack of fitness in the workplace  
 8 but were allowed to proceed, and/or were ratified by officers, directors, and/or managing agents of  
 9 Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or Does 1-25. Plaintiff is, therefore, entitled  
 10 to recover punitive damages against Defendants and/or Does 1-50 in an amount according to proof at  
 11 trial.

12 84. As a result of the conduct of Defendants and/or Does 1-50, Plaintiff was forced to retain  
 13 an attorney in order to protect his rights. Accordingly, Plaintiff seeks the reasonable attorneys' fees  
 14 and costs incurred in this litigation in an amount according to proof at trial.

15 WHEREFORE, Plaintiff prays for judgment as set forth below.

16  
 17 **FIFTH CAUSE OF ACTION**  
**RETALIATION IN VIOLATION OF FEHA**  
**(CAL. GOV. CODE § 12900 et seq.)**

18 (Against Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25)  
 19

20 85. By this reference, Plaintiff hereby incorporates each and every paragraph set forth above  
 21 as though fully set forth at this place.

22 86. Pursuant to the California Government Code, section 12900 et seq., Plaintiff had a legal  
 23 right to be free from discrimination and harassment.

24 87. As a result of Plaintiff protesting the severe and/or pervasive harassment to which he was  
 25 subjected on the basis of his religion, race, and national origin, as described above, Defendants SARA  
 26 LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25 retaliated against Plaintiff by further harassing  
 27 him and altering the terms of his employment.

28 88. As a direct and proximate result of the unlawful conduct of Defendants SARA LEE,



1 EARTHGRAINS, BIMBO, and/or DOES 1-25, Plaintiff has suffered special damages including but  
 2 not limited to past and future loss of income, benefits, medical expenses, and other damages to be  
 3 proven at time of trial.

4 89. As a direct and proximate result of the unlawful conduct of Defendants SARA LEE,  
 5 EARTHGRAINS, BIMBO, and/or DOES 1-25, Plaintiff has suffered general damages including but  
 6 not limited to shock, embarrassment, physical distress and injury, humiliation, emotional distress,  
 7 stress and other damages to be proven at the time of trial.

8 90. The unlawful conduct alleged above was engaged in by the officers, directors, supervisors  
 9 and/or managing agents of Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25  
 10 who were acting at all times relevant to this Complaint within the scope and course of their  
 11 employment. Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25 are, therefore,  
 12 liable for the conduct of said agents and employees under the Doctrine of Strict Liability.

13 91. Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25 committed the  
 14 acts herein alleged maliciously, fraudulently and oppressively in conscious disregard for Plaintiff's  
 15 rights and such acts were committed by and/or ratified by, and/or were committed with the knowledge  
 16 of employees' lack of fitness in the workplace, but were allowed to proceed by officers, directors,  
 17 and/or managing agents of Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25.  
 18 Plaintiff is, therefore, entitled to recover punitive damages from Defendants in an amount according to  
 19 proof at trial.

20 92. As a result of the conduct of Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or  
 21 DOES 1-25, Plaintiff was forced to retain an attorney in order to protect her rights. Accordingly,  
 22 Plaintiff seeks the reasonable attorneys' fees and costs incurred in this litigation in an amount  
 23 according to proof at trial.

24 WHEREFORE, Plaintiff prays for judgment as set forth below.

25 ///

26 ///

27 ///

28 ///

THE  
DOLAN  
LAW FIRM

1000 LAYTON  
THE DOLAN BUILDING  
1436 MARKET STREET  
SAN FRANCISCO,  
CA 94102  
TEL: (415) 421-2800  
FAX: (415) 421-2830

**SIXTH CAUSE OF ACTION**  
**INTERFERENCE IN VIOLATION OF CFRA**  
 (Cal. Govt. Code § 12900 et seq.)  
 (Against SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25)

93. Plaintiff is informed and believes, and thereon alleges that he was discriminated against in the terms and conditions of his employment, as outlined above, as a result of exercising his right to request and/or take medical leave from his employment.

94. Plaintiff was an "eligible employee" under the California Family Rights Act ("CFRA"), as he had been employed by Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25 for at least 12 months and had been employed for over 1250 hours of service in the 12 month period before he requested and took a medical leave from his employment.

95. Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25 were each a "covered employer" under the CFRA, as they employed 50 or more people within a 75-mile radius to perform services for a salary or wage.

96. Plaintiff provided Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25 with notice of his request for protected medical leave, including a request for intermittent leave.

97. Plaintiff requested medical leave from his employment for a reason covered under the CFRA: the serious health condition of Plaintiff's son.

98. Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25 interfered with and/or denied Plaintiff's right to take medical leave, including intermittent leave, by refusing to provide Plaintiff with information regarding his eligibility for leave and right to return to work in the same and/or an equivalent position and/or by denying his leave request outright.

99. Plaintiff is informed and believes and thereon alleges that Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25 willfully and/or with reckless indifference violated California Government Code Section 12900, et seq, including Section 12945.2, and interfered with and denied Plaintiff's right to request and/or take medical leave from his employment. Such actions have resulted in damage and injury to Plaintiff as alleged herein.

100. As a direct and proximate result of Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25's unlawful conduct, Plaintiff has suffered special damages including but not limited

1 to past and future loss of income, benefits, medical expenses, and other damages to be proven at time  
2 of trial.

3 101. As a direct and proximate result of the unlawful conduct of Defendants SARA LEE,  
4 EARTHGRAINS, BIMBO, and/or DOES 1-25, and each of them, Plaintiff has suffered general  
5 damages including but not limited to shock, embarrassment, physical distress and injury, humiliation,  
6 emotional distress, stress and other damages to be proven at the time of trial.

7 102. The unlawful conduct alleged above was engaged in and/or ratified by the officers,  
8 directors, supervisors and/or managing agents of Defendants SARA LEE, EARTHGRAINS, BIMBO,  
9 and/or DOES 1-25, and each of them, who were acting at all times relevant to this Complaint within  
10 the scope and course of their employment. Defendants SARA LEE, EARTHGRAINS, BIMBO,  
11 and/or DOES 1-25 are, therefore, liable for the conduct of said agents and employees under the  
12 Doctrine of Strict Liability.

13 103. Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25, and each of  
14 them, committed the acts herein alleged maliciously, fraudulently and oppressively in conscious  
15 disregard for Plaintiff's rights. Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-  
16 25 committed and/or ratified the acts alleged herein. These acts were committed with the knowledge  
17 of employees' lack of fitness in the workplace but were allowed to proceed, by officers, directors,  
18 and/or managing agents of Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25.  
19 Plaintiff is, therefore, entitled to recover punitive damages from Defendants in an amount according to  
20 proof at trial

21 104. As a result of the conduct of Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or  
22 DOES 1-25, and each of them, Plaintiff was forced to retain an attorney in order to protect his rights.  
23 Accordingly, Plaintiff seeks the reasonable attorneys' fees and costs incurred in this litigation in an  
24 amount according to proof at trial.

25 ///

26 ///

27 ///

28 ///

THE  
DOLAN  
LAW FIRM

2000 LAMBERT  
THE DOLAN BUILDING  
1420 MARKET STREET  
SAN FRANCISCO,  
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TEL: (415) 421-2800  
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**SEVENTH CAUSE OF ACTION  
RETALIATION IN VIOLATION OF CFRA  
(Cal. Govt. Code § 12900 et seq.)**

(Against SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25)

105. By this reference, Plaintiff hereby incorporates each and every paragraph set forth above as though fully set forth at this place.

106. Plaintiff is informed and believes, and thereon alleges that he was retaliated against in the terms and conditions of his employment, as outlined above, as a result of exercising his right to request and take medical leave from his employment.

107. Plaintiff was an "eligible employee" under the CFRA, as he had been employed by Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25 for at least 12 months and had been employed for over 1250 hours of service in the 12 month period before he requested and took a medical leave from his employment.

108. Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25 were each a "covered employer" under the CFRA, as they employed 50 or more people within a 75-mile radius to perform services for a salary or wage.

109. Plaintiff provided Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25 with notice of Plaintiff's request for protected medical leave, including a request for intermittent leave.

110. Plaintiff requested medical leave from his employment for reasons covered under the CFRA: the serious health condition of Plaintiff's son and his injured foot.

111. Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25 retaliated against Plaintiff for exercising his right to request and/or take medical leave under the CFRA by subjecting Plaintiff to heightened job scrutiny and unwarranted disciplinary action and by not returning Plaintiff to an equivalent position.

112. Plaintiff is informed and believes and thereon alleges that Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25 willfully and/or with reckless indifference violated California Government Code Section 12945.2 and discriminated against Plaintiff as outlined above, as a result of exercising his right to request and/or take medical leave from his employment. Such discrimination has resulted in damage and injury to Plaintiff as alleged herein.

113. As a direct and proximate result of Defendants SARA LEE, EARTHGRAINS, BIMBO,

1 and/or DOES 1-25's unlawful conduct, Plaintiff has suffered special damages including but not limited  
 2 to past and future loss of income, benefits, medical expenses, and other damages to be proven at time  
 3 of trial.

4 114. As a direct and proximate result of the unlawful conduct of Defendants SARA LEE,  
 5 EARTHGRAINS, BIMBO, and/or DOES 1-25, and each of them, Plaintiff has suffered general  
 6 damages including but not limited to shock, embarrassment, physical distress and injury, humiliation,  
 7 emotional distress, stress and other damages to be proven at the time of trial.

8 115. The unlawful conduct alleged above was engaged in and/or ratified by the officers,  
 9 directors, supervisors and/or managing agents of Defendants SARA LEE, EARTHGRAINS, BIMBO,  
 10 and/or DOES 1-25, and each of them, who were acting at all times relevant to this Complaint within  
 11 the scope and course of their employment. Defendants SARA LEE, EARTHGRAINS, BIMBO,  
 12 and/or DOES 1-25 are, therefore, liable for the conduct of said agents and employees under the  
 13 Doctrine of Strict Liability.

14 116. Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25, and each of  
 15 them, committed the acts herein alleged maliciously, fraudulently and oppressively in conscious  
 16 disregard for Plaintiff's rights. Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-  
 17 25 committed and/or ratified the acts alleged herein. These acts were committed with the knowledge  
 18 of employees' lack of fitness in the workplace but were allowed to proceed, by officers, directors,  
 19 and/or managing agents of Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25.  
 20 Plaintiff is, therefore, entitled to recover punitive damages from Defendants in an amount according to  
 21 proof at trial.

22 117. As a result of the conduct of Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or  
 23 DOES 1-25, and each of them, Plaintiff was forced to retain an attorney in order to protect his rights.  
 24 Accordingly, Plaintiff seeks the reasonable attorneys' fees and costs incurred in this litigation in an  
 25 amount according to proof at trial.

26 WHEREFORE, Plaintiff prays for judgment as set forth below.  
 27 /  
 28 /

**EIGHTH CAUSE OF ACTION**  
**FAILURE TO TAKE REASONABLE STEPS TO PREVENT DISCRIMINATION AND**  
**HARASSMENT FROM OCCURRING IN VIOLATION OF FEHA**  
**(CAL. GOV. CODE § 12900 et seq.)**  
 (Against Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25)

118. By this reference, Plaintiffs hereby incorporate each and every paragraph set forth above as though fully set forth at this place.

119. Plaintiff is informed and believes, and thereon alleges that Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25, and each of them, failed to take all reasonable steps to prevent and/or stop discrimination and harassment from occurring in the workplace, and as a result said harassment and discrimination did occur and continued to occur in violation of California Government Code section 12940(k).

120. Plaintiff is informed, believes, and thereon alleges that discrimination and/or retaliation against her resulted from Defendants SARA LEE'S, EARTHGRAINS', BIMBO'S, and/or DOES' 1-25 failure to have in place a prophylactic anti-discrimination and retaliation policy and/or reporting mechanism and/or their failure to take all reasonable steps to prevent discrimination and/or retaliation from occurring in the workplace.

121. As a direct and proximate result of the unlawful conduct of Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25, Plaintiff has suffered special damages including but not limited to past and future loss of income, benefits, and other damages to be proven at time of trial.

122. As a direct and proximate result of the unlawful conduct of Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25, Plaintiff has suffered general damages including but not limited to shock, embarrassment, physical distress and injury, humiliation, emotional distress, stress and other damages to be proven at the time of trial.

123. Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25 committed the acts herein alleged maliciously, fraudulently, and oppressively in conscious disregard of Plaintiff's rights and such acts were committed by and/or ratified by, and/or were committed with the knowledge of employees' lack of fitness in the workplace but were allowed to proceed, and/or were ratified by officers, directors, and/or managing agents of Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25. Plaintiff is, therefore, entitled to recover punitive damages against Defendants



1 SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25 in an amount according to proof at trial.

2 124. As a result of the conduct of Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or  
3 DOES 1-25, Plaintiff was forced to retain an attorney in order to protect her rights. Accordingly,  
4 Plaintiff seeks the reasonable attorneys fees and costs incurred in this litigation in an amount  
5 according to proof at trial.

6 WHEREFORE, Plaintiff prays for judgment as set forth below.

7  
8 **NINTH CAUSE OF ACTION**  
9 **FAILURE TO TAKE APPROPRIATE REMEDIAL MEASURES IN VIOLATION OF FEHA**  
10 **(CAL. GOV. CODE § 12900 et seq.)**  
11 **(Against Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES1-25)**

12 125. By this reference, Plaintiff hereby incorporates each and every paragraph set forth above  
13 as though fully set forth at this place.

14 126. Plaintiff is informed, believes, and thereon alleges that Defendants SARA LEE,  
15 EARTHGRAINS, BIMBO, and/or DOES 1-25, as the employers and/or managing agents and/or  
16 supervisors of Plaintiff, and/or of the Defendants alleged herein, failed to investigate and/or take other  
17 remedial measures when they knew or should have known of the unlawful conduct occurring in the  
18 workplace against Plaintiff. As such, Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or  
19 DOES 1-25 violated FEHA's mandate to take immediate and appropriate remedial measures in such  
20 circumstances pursuant to Cal. Govt. Code section 12940(j).

21 127. Plaintiff is informed, believes, and thereon alleges that she was subjected to further  
22 discrimination, harassment, and retaliation as a result of the failure of Defendants SARA LEE,  
23 EARTHGRAINS, BIMBO, and/or DOES 1-25 to take immediate and appropriate remedial measures.

24 128. As a direct and proximate result of the unlawful conduct of Defendants SARA LEE,  
25 EARTHGRAINS, BIMBO, and/or DOES 1-25, Plaintiff has suffered special damages including but  
26 not limited to past and future loss of income, benefits, and other damages to be proven at time of trial.

27 129. As a direct and proximate result of the unlawful conduct of Defendants SARA LEE,  
28 EARTHGRAINS, BIMBO, and/or DOES 1-25, Plaintiff has suffered general damages including but  
not limited to shock, embarrassment, physical distress and injury, humiliation, emotional distress,

1 stress and other damages to be proven at the time of trial.

2 130. Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25 committed the  
3 acts herein alleged maliciously, fraudulently, and oppressively in conscious disregard for Plaintiff's  
4 rights and such acts were committed by and/or ratified by, and/or were committed with the knowledge  
5 of employees' lack of fitness in the workplace but were allowed to proceed, and/or were ratified by  
6 officers, directors, and/or managing agents of Defendants SARA LEE, EARTHGRAINS, BIMBO,  
7 and/or DOES 1-25. Plaintiff is, therefore, entitled to recover punitive damages against Defendants  
8 SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25 in an amount according to proof at trial.

9 131. As a result of the conduct of Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or  
10 DOES 1-25, Plaintiff was forced to retain an attorney in order to protect her rights. Accordingly,  
11 Plaintiff seeks the reasonable attorneys fees and costs incurred in this litigation in an amount  
12 according to proof at trial.

13 WHEREFORE, Plaintiffs pray for judgment as set forth below.

14  
15 **TENTH CAUSE OF ACTION**  
16 **RETALIATION IN VIOLATION OF LABOR CODE § 6310**  
(Against SARA LEE, EARTHGRAINS, BIMBO, and DOES 1-25)

17 132. By this reference, Plaintiff hereby incorporates each and every paragraph set forth above  
18 as though fully set forth at this place.

19 133. At all times mentioned herein, Labor Code Section 6310 was in full force and effect, and,  
20 in part, prohibited retaliation against employees for making internal complaints to their employer  
21 regarding unsafe working conditions.

22 134. Plaintiff is informed and believes and thereon alleges that Defendants willfully and/or  
23 with reckless indifference violated California Labor Code Section 6310 by retaliating against Plaintiff  
24 because Plaintiff complained to Defendants of unsafe working conditions. For example, Plaintiff  
25 complained that empty baskets and rolling dollies which were placed around Plaintiff's truck made it  
26 difficult and unsafe for Plaintiff to drive by. Plaintiff also complained that gas fumes in the garage  
27 were dangerous and harmful.

28 135. As a direct and proximate result of the unlawful conduct of Defendants, Plaintiff has  
suffered special damages including, but not limited to, past and future loss of income, benefits, and

1 other damages to be proven at time of trial.

2 136. As a direct and proximate result of the unlawful conduct of Defendants, Plaintiff has  
3 suffered general damages including but not limited to shock, embarrassment, humiliation, emotional  
4 distress, stress, and other damages to be proven at the time of trial.

5 137. The unlawful conduct alleged above was engaged in by the officers, directors, supervisors,  
6 and/or managing agents of Defendants; who were acting at all times relevant to this Complaint within  
7 the scope and course of their employment. Defendants, therefore, are liable for the conduct of said  
8 agents and employees under the Doctrine of Strict Liability.

9 138. Defendants committed the acts herein alleged maliciously, fraudulently, and oppressively  
10 in conscious disregard of Plaintiff's rights. Defendants committed and/or ratified the acts alleged  
11 herein. These acts were committed with the knowledge of employees' lack of fitness in the workplace  
12 but were allowed to proceed by officers, directors, and/or managing agents of Defendants.  
13 Furthermore, these acts were committed by Defendants' owner and managing agents, Defendants  
14 DIAZ and BAKER and/or DOES 26-50. Plaintiff is, therefore, entitled to recover punitive damages  
15 from Defendant in an amount according to proof at trial.

16 139. As a result of the conduct of Defendants, Plaintiff was forced to retain an attorney in order  
17 to protect his rights. Accordingly, Plaintiff seeks the reasonable attorneys' fees and costs incurred in  
18 this litigation in an amount according to proof at trial.

19 WHEREFORE, Plaintiff prays for relief as set forth below.

20  
21 **ELEVENTH CAUSE OF ACTION**  
22 **NEGLIGENT HIRING/PROMOTION, RETENTION AND SUPERVISION**  
(Against Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25)

23 140. By this reference, Plaintiff hereby incorporates each and every paragraph set forth above  
24 as though fully set forth at this place.

25 141. Plaintiff is informed and believes and thereon alleges that at the time Defendant DIAZ  
26 was hired by Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25 to be the Human  
27 Resource Manager, he had neither the requisite background, skills or experience to perform the  
28 functions that position required. In addition, Defendant DIAZ lacked the religion, race and



1 harassment prevention training that was required for management-level employees of Defendants  
 2 SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25. Defendants SARA LEE,  
 3 EARTHGRAINS, BIMBO, and/or DOES 1-25 either failed to investigate the fitness of Defendant  
 4 DIAZ for his senior management position or hired Defendant DIAZ despite the knowledge of his lack  
 5 of fitness for the position of Human Resources Manager.

6 142. Plaintiff is informed and believes and thereon alleges that at the time Defendant BAKER  
 7 was hired by Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25 for the position  
 8 of Sales Manager, he had neither the requisite background, skills, or experience to perform any of the  
 9 management functions for which he was hired by Defendants SARA LEE, EARTHGRAINS, BIMBO,  
 10 and/or DOES 1-25, including adequate training and supervision in religion, race and harassment  
 11 matters and prevention within the workplace. Defendants SARA LEE, EARTHGRAINS, BIMBO,  
 12 and/or DOES 1-25 either failed to investigate, in a proper manner, Defendant BAKER's qualifications  
 13 and fitness for his Sales Manager position or hired Defendant BAKER despite their knowledge of his  
 14 lack of fitness for management functions and positions.

15 143. Plaintiff is informed and believes and thereon alleges that at the time Defendants BAKER  
 16 and DIAZ were retained in their employment Defendants SARA LEE, EARTHGRAINS, BIMBO,  
 17 and/or DOES 1-25, knew or should have known that Defendants BAKER and DIAZ were unfit to  
 18 perform the functions of each of their jobs and/or posed an undue risk to the employees of Defendants  
 19 SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25, of which Plaintiff is an employee.  
 20 Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25 either failed to properly  
 21 investigate the fitness for duty of Defendants BAKER and DIAZ or failed to adequately supervise  
 22 Defendants BAKER and DIAZ despite their knowledge of Defendants BAKER and DIAZ's lack of  
 23 fitness for duty.

24 144. As a result of the lack of fitness for duty of Defendants BAKER and DIAZ, and the  
 25 unreasonable risks they posed to the employees of Defendants SARA LEE, EARTHGRAINS,  
 26 BIMBO, and/or DOES 1-25, and as a result of their being negligently promoted/hired, retained and  
 27 supervised within Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25, Plaintiff  
 28 was discriminated against and harassed in violation of FEHA on the basis of his religion, race and/or

1 national origin to the detriment of Plaintiff.

2 145. As a direct, legal, and proximate result of Defendants SARA LEE, EARTHGRAINS,  
3 BIMBO, and/or DOES 1-25's aforesaid negligence, carelessness, recklessness, and violations of the  
4 law Plaintiff has suffered special damages including but not limited to past and future loss of income,  
5 benefits, and other damages to be proven at time of trial.

6 146. As a direct and proximate result of the unlawful conduct of Defendants and/or DOES 1-  
7 50, Plaintiff has suffered general damages including but not limited to shock, embarrassment, physical  
8 distress and injury, humiliation, emotional distress, stress and other damages to be proven at the time  
9 of trial.

10 147. Defendants and/or DOES 1-50 committed the acts herein alleged maliciously, fraudulently  
11 and oppressively in conscious disregard for Plaintiff's rights and such acts were committed by and/or  
12 ratified by, and or were committed with the knowledge of employees' lack of fitness in the workplace  
13 but were allowed to proceed, and/or were ratified by officers, directors, and/or managing agents of  
14 Defendants and/or DOES 1-50. Plaintiffs are, therefore, entitled to recover punitive damages against  
15 Defendants and/or DOES 1-50 in an amount according to proof at trial.

16 WHEREFORE, Plaintiff prays for judgment as set forth below.

17  
18 **TWELFTH CAUSE OF ACTION**  
19 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**  
(Against All Defendants and/or Does 1-50)

20 148. By this reference, Plaintiff hereby incorporates each and every paragraph set forth above  
21 as though fully set forth at this place.

22 149. By the conduct alleged above, which is prohibited under Cal. Govt. Code §§ 12900 et seq.  
23 and Cal. Lab. Code § 6310, Defendants and/or DOES 1-50 and their supervisors, agents and/or  
24 officers, acted outrageously, with the intention to cause, or with reckless disregard of the probability of  
25 causing Plaintiff severe emotional distress. This conduct, which was unprivileged and unwanted by  
26 Plaintiff, actually and proximately caused Plaintiff severe emotional distress.

27 150. Defendants and/or DOES1-50, as alleged above, harmed Plaintiff because those actions  
28

1 caused them to suffer humiliation, mental anguish, and emotional and physical distress. The actions  
 2 of Defendants and/or DOES 1-50, as alleged above, also injured Plaintiff's minds and bodies. As a  
 3 result of such unlawful conduct and consequent harm, Plaintiff suffered damages that will be proven at  
 4 trial.

5 151. Defendants' and/or DOES 1-50's conduct proximately caused Plaintiff to suffer, and to  
 6 continue to suffer, damages, including lost wages and other employment benefits, and Plaintiff has  
 7 suffered the intangible loss of such employment-related opportunities in an amount which will be  
 8 proven at trial.

9 152. Defendants and/or DOES 1-50 committed the acts herein alleged maliciously, fraudulently  
 10 and oppressively in conscious disregard for Plaintiff's rights and such acts were committed by and/or  
 11 ratified by, and/or were committed with the knowledge of employees' lack of fitness in the workplace  
 12 but were allowed to proceed, and/or were ratified by officers, directors, and/or managing agents of  
 13 Defendants and/or DOES 1-50. Plaintiff is, therefore, entitled to recover punitive damages against  
 14 Defendants and/or DOES 1-50 in an amount according to proof at trial.

15 WHEREFORE, Plaintiff prays for relief as set forth below.

16  
 17 **THIRTEENTH CAUSE OF ACTION**  
**FAILURE TO COMPENSATE FOR ALL HOURS WORKED**  
 18 **(Lab. Code §§ 204, 510, 1194 and 1198)**

19 (Against Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25)

20 153. By this reference, Plaintiff hereby incorporates each and every paragraph set forth above  
 21 as though fully set forth at this place.

22 154. Labor Code section 204 establishes the fundamental right of all employees in the State of  
 23 California to be paid wages in a timely fashion for their work, including any overtime.

24 155. Labor Code section 510 defines a day's work as eight hours and states that any work in  
 25 excess of eight hours in one work day and any work in excess of 40 hours in any one work week must  
 26 be compensated at the rate of no less than one and one half times the regular rate of pay.

27 156. Pursuant to Labor Code section 1194, Plaintiff is entitled to bring a civil action to seek to  
 28 recover, inter alia, overtime wages from Defendants without exhausting any administrative remedies  
 which potentially may be available by Statute or Code.

-29-



1 157. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer than the  
 2 hours set by the Industrial Welfare Commission ("IWC") or under conditions prohibited by IWC  
 3 Orders. IWC Wage Order Number 4-2001, the Order applicable to Plaintiff's employment, provides  
 4 for payment of overtime wages equal to one and one half times an employee's regular rate of pay for  
 5 all hours worked in excess of eight hours in a work day or 40 hours in a work week.

6 158. Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES 1-25 regularly  
 7 expected that Plaintiff work in excess of eight hours in a work day and/or 40 hours in a work week.

8 159. At all relevant times, Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or DOES  
 9 1-25 failed to pay Plaintiff wages when due, and violated Labor Code section 204.

10 160. Such a pattern, practice and uniform administration of unlawful corporate policy designed  
 11 to deprive an employee of compensation, creates a cause of action for Plaintiff to recover the unpaid  
 12 balance of the amount of overtime and other compensation, including interest thereon, reasonable  
 13 attorneys' fees, costs of suit, and statutory penalties.

14 161. As a result of the conduct of Defendants SARA LEE, EARTHGRAINS, BIMBO, and/or  
 15 DOES 1-25, Plaintiff was forced to retain an attorney in order to protect his rights. Accordingly,  
 16 Plaintiff seeks the reasonable attorney's fees and costs incurred in this litigation in an amount  
 17 according to proof at trial.

18 WHEREFORE, Plaintiff prays for judgment as set forth below.

19 **PRAYER FOR RELIEF**

20 Wherefore, Plaintiff makes the following demand:

21 As to the First through Tenth Causes of Action set forth herein, Plaintiff prays:

- 22 a) That process be issued and served as provided by law, requiring Defendants to appear and  
 23 answer or face judgment;
- 24 b) That Plaintiff have and recover judgment against Defendants in an amount to be  
 25 determined at trial as general damages for their wrongful conduct;
- 26 c) That Plaintiff have and recover judgment against Defendants in an amount to be  
 27 determined at trial as special, actual, compensatory and/or nominal damages for their  
 28 wrongful conduct;

- d) That Plaintiff have and recover a judgment against Defendants for punitive damages in an amount to be determined at trial sufficient to punish, penalize and/or deter Defendants;
- e) That Plaintiff have and recover a judgment against Defendants in an amount to be determined at trial for expenses of this litigation, including, but not limited to, reasonable attorney's fees and costs;
- f) That Plaintiff have and recover a judgment against Defendants for all pre-judgment and post-judgment interest; and
- g) That Plaintiff have such other relief as provided for by law and/or this Court deems just and proper.

As to the Eleventh and Twelfth Causes of Action set forth herein, Plaintiff prays:

- a) That process be issued and served as provided by law, requiring Defendants to appear and answer or face judgment;
- b) That Plaintiff have and recover judgment against Defendants in an amount to be determined at trial as general damages for their wrongful conduct;
- c) That Plaintiff have and recover judgment against Defendants in an amount to be determined at trial as special, actual, compensatory and/or nominal damages for their wrongful conduct;
- d) That Plaintiff has and recovers a judgment against all Defendants and/or DOES 1-50 for punitive damages in an amount to be determined at trial sufficient to punish, penalize and/or deter Defendants;
- e) That Plaintiff has and recovers a judgment against Defendants for all prejudgment interest;
- f) That Plaintiff has such other relief as this Court deems just and appropriate.

As to the Thirteenth Cause of Action set forth herein, Plaintiff prays:

- a) That process be issued and served as provided by law, requiring Defendant to appear and answer or face judgment;
- b) That Plaintiff have and recover judgment against Defendant in an amount to be determined at trial as special, actual, compensatory and/or nominal damages for its

wrongful conduct;

- c) That Plaintiff have and recover a judgment against Defendant in an amount to be determined at trial for expenses of this litigation, including, but not limited to, reasonable attorney's fees and costs; and
- d) That Plaintiff have and recover all statutory penalties available;
- e) That Plaintiff have and recover a judgment against Defendant for all pre-judgment and post-judgment interest; and
- f) That Plaintiff have such other relief as this Court deems just and proper.

DATED: April 4, 2013

**THE DOLAN LAW FIRM**

By: 

CHRISTOPHER B. DOLAN  
MICHAEL J. DEPAUL  
GHAZALEH MODARRESI  
Attorneys for Plaintiff  
MOHAMED HUGAIS

**DEMAND FOR JURY TRIAL**

Plaintiff MOHAMED HUGAIS hereby demands Trial by Jury.

DATED: April 4, 2013

**THE DOLAN LAW FIRM**

By: 

CHRISTOPHER B. DOLAN  
MICHAEL J. DEPAUL  
GHAZALEH MODARRESI  
Attorneys for Plaintiff  
MOHAMED HUGAIS



## Exhibit B

# SUMMONS (CITACION JUDICIAL)

SUM-100

**NOTICE TO DEFENDANT: SARA LEE CORPORATION, a Maryland (AVISO AL DEMANDADO):** corporation doing business in California; EARTHGRAINS BAKING COMPANY, INC., a Delaware corporation doing business in California; BIMBO BAKERIES USA, INC., a Delaware corporation doing business in California; MARTY BAKER, an individual; RIC DIAZ, an individual, and DOES 1 through 50, inclusive,

**YOU ARE BEING SUED BY PLAINTIFF: MOHAMED HUGAIS (LO ESTÁ DEMANDANDO EL DEMANDANTE):**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

ENBOSCH  
FILED  
ALAMEDA COUNTY

APR 04 2013

CLERK OF THE SUPERIOR COURT  
Santa Clara

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desear el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Alameda Superior Court  
1225 Fallon Street

Oakland, CA 94612

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no... es):

Christopher B. Dolan (SBN 165358)

(415) 421-2800

Michael DePaul (SBN 231641)

Ghazaleh Modarresi (SBN 280339)

THE DOLAN LAW FIRM, 1438 Market Street, San Francisco, CA 94102

DATE:

(Fecha) 4/4/13

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED:** You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

EARTHGRAINS BAKING COMPANY, INC., a Delaware

3. ☒ on behalf of (specify): corporation doing business in California

under: ☒ CCP 416.10 (corporation)

☐ CCP 416.60 (minor)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.70 (conservatee)

☐ CCP 416.40 (association or partnership)

☐ CCP 416.90 (authorized person)

☐ other (specify):

4. ☒ by personal delivery on (date): 4-26-13

Page 1 of 1

FAXED

## Exhibit C



# SUMMONS (CITACION JUDICIAL)

SUM-100

**NOTICE TO DEFENDANT: SARA LEE CORPORATION**, a Maryland (AVISO AL DEMANDADO): corporation doing business in California; **EARTHGRAINS BAKING COMPANY, INC.**, a Delaware corporation doing business in California; **BIMBO BAKERIES USA, INC.**, a Delaware corporation doing business in California; **MARTY BAKER**, an individual; **RIC DIAZ**, an individual, and **DOES 1** through **50**, inclusive,

**YOU ARE BEING SUED BY PLAINTIFF: MOHAMED HUGAIS**  
(LO ESTÁ DEMANDANDO EL DEMANDANTE);

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**ENBOSQUE**  
**FILED**  
**ALAMEDA COUNTY**

APR 04 2013

CLERK OF THE SUPERIOR COURT  
Anita Dhir

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desear el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Alameda Superior Court  
1225 Fallon Street

Oakland, CA 94612

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no... es):

Christopher B. Dolan (SBN 165358)

(415) 421-2800

Michael DePaul (SBN 231641)

Ghazaleh Modarresi (SBN 280339)

THE DOLAN LAW FIRM, 1438 Market Street, San Francisco, Anita Dhir

DATE: 4/4/13 Par Sweeten

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): **BIMBO BAKERIES USA, INC.** a Delaware corporation doing business in California

under: ☒ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

4. ☒ by personal delivery on (date): 4.26.13

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.80 (authorized person)

## Exhibit D

**THE HILLSHIRE BRANDS COMPANY**  
formerly known as SARA LEE CORPORATION

**SUMMONS**  
**(CITACION JUDICIAL)**

SOM-100

**NOTICE TO DEFENDANT: SARA LEE CORPORATION**, a Maryland  
**(AVISO AL DEMANDADO):** corporation doing business in  
California; **EARTHGRAINS BAKING COMPANY, INC.**, a  
Delaware corporation doing business in California;  
**BIMBO BAKERIES USA, INC.**, a Delaware corporation  
doing business in California; **MARTY BAKER**, an  
individual; **RIC DIAZ**, an individual, and **DOES 1**  
through 50, inclusive,

**YOU ARE BEING SUED BY PLAINTIFF: MOHAMED HUGAIS**  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**ENDEAVOR**  
**FILED**  
**ALAMEDA COUNTY**

APR 04 2013

CLERK OF THE SUPERIOR COURT  
**Anita Dhir**

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

**Tiene 30 DÍAS DE CALENDARIO** después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Alameda Superior Court  
1225 Fallon Street

Oakland, CA 94612

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no... es):

Christopher B. Dolan (SBN 165358)

(415) 421-2800

Michael DePaul (SBN 231641)

Ghazaleh Modarresi (SBN 280339)

THE DOLAN LAW FIRM, 1438 Market Street, San Francisco, **Anita Dhir**

DATE: **4/4/13** **Pat Sweeten**

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons. (POS-010)).

**NOTICE TO THE PERSON SERVED:** You are served

(REAL)

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): **SARA LEE CORPORATION**, a Maryland corporation  
doing business in California

under: ☒ CCP 416.10 (corporation)

☐ CCP 416.60 (minor)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.70 (conservatee)

☐ CCP 416.40 (association or partnership)

☐ CCP 416.90 (authorized person)

☐ other (specify):

4. ☒ by personal delivery on (date): **5-1-13**



## **Exhibit E**

# SUMMONS (CITACION JUDICIAL)

SUM-100

**NOTICE TO DEFENDANT: SARA LEE CORPORATION**, a Maryland (AVISO AL DEMANDADO): corporation doing business in California; **EARTHGRAINS BAKING COMPANY, INC.**, a Delaware corporation doing business in California; **BIMBO BAKERIES USA, INC.**, a Delaware corporation doing business in California; **MARTY BAKER**, an individual; **RIC DIAZ**, an individual, and **DOES 1** through 50, inclusive,

**YOU ARE BEING SUED BY PLAINTIFF: MOHAMED HUGAIS**  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

ENBROCH  
FILED  
ALAMEDA COUNTY

APR 04 2013

CLERK OF THE SUPERIOR COURT  
Anita Dhir

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

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There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):

Alameda Superior Court  
1225 Fallon Street

CASE NUMBER: 13674251

Oakland, CA 94612

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Christopher B. Dolan (SBN 165358)

(415) 421-2800

Michael DePaul (SBN 231641)

Ghazaleh Modarresi (SBN 280339)

THE DOLAN LAW FIRM, 3438 Market Street, San Francisco, CA 94114, Anita Dhir

DATE: 4/4/13 Pat Sweeten

Clerk, by \_\_\_\_\_, Deputy  
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

**NOTICE TO THE PERSON SERVED:** You are served

- ☒ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):

- ☐ by personal delivery on (date):

## Exhibit F



# SUMMONS (CITACION JUDICIAL)

SUM-100

**NOTICE TO DEFENDANT: SARA LEE CORPORATION**, a Maryland (AVISO AL DEMANDADO): corporation doing business in California; **EARTHGRAINS BAKING COMPANY, INC.**, a Delaware corporation doing business in California; **BIMBO BAKERIES USA, INC.**, a Delaware corporation doing business in California; **MARTY BAKER**, an individual; **RIC DIAZ**, an individual, and **DOES 1** through 50, inclusive,

**YOU ARE BEING SUED BY PLAINTIFF: MOHAMED HUGAIS**  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

ENBOSCH  
FILED  
ALAMEDA COUNTY

APR 04 2013

CLERK OF THE SUPERIOR COURT  
Anita Dhir

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):

Alameda Superior Court  
1225 Fallon Street

CASE NUMBER  
(Número de caso): 13674251

Oakland, CA 94612

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Christopher B. Dolan (SBN 165358) (415) 421-2800

Michael DePaul (SBN 231641)

Ghazaleh Modarresi (SBN 280339)

THE DOLAN LAW FIRM, 3438 Market Street, San Francisco, CA 94114, Anita Dhir

DATE: 4/4/13 Pat Sweeten Clerk, by \_\_\_\_\_, Deputy  
(Fecha) (Secretaria) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☒ as an individual defendant.  
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):

4. ☐ by personal delivery on (date):

## Exhibit G

The Dolan Law Firm  
 Attn: Dolan, Christopher B.  
 1438 Market Street  
 San Francisco, CA 94102

**Superior Court of California, County of Alameda**

Hugais

Plaintiff/Petitioner(s)

VS.

Sara Lee Corporation

Defendant/Respondent(s)

(Abbreviated Title)

No. RG13674251

**NOTICE OF CASE MANAGEMENT  
 CONFERENCE AND ORDER**  
 Unlimited Jurisdiction

**TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD.**

Notice is given that a Case Management Conference has been scheduled as follows:

Date: 08/19/2013 Time: 03:30 PM	Department: 18 Location: Administration Building Third Floor 1221 Oak Street, Oakland CA 94612  Internet: <a href="http://www.alameda.courts.ca.gov">http://www.alameda.courts.ca.gov</a>	Judge: Michael Ballachey Clerk: Mariama Gebeyehou Clerk telephone: (510) 267-6934 E-mail: <a href="mailto:Dept.18@alameda.courts.ca.gov">Dept.18@alameda.courts.ca.gov</a> Fax: (510) 267-1506
------------------------------------	--	---

**ORDERS**

1. You must:
  - a. Serve all named defendants and file proofs of service on those defendants with the court within 60 days of the filing of the complaint (CRC 3.110(b));
  - b. Give notice of this conference to any party not included in this notice and file proof of service;
  - c. Meet and confer, in person or by telephone, to consider each of the issues identified in CRC 3.724 no later than 30 calendar days before the date set for the Case Management Conference;
  - d. File and serve a completed Case Management Statement (use of Judicial Council Form CM-110 is mandatory) at least 15 days before the Case Management Conference (CRC 3.725)\*
2. If you do not follow the orders above, you are hereby ordered to show cause why you should not be sanctioned under CRC 2.30. The hearing on the Order to Show Cause re: Sanctions will be at the same time as the Case Management Conference. Sanctions may include monetary sanctions and any other sanction permitted by law, including striking pleadings or dismissing the action.
3. You are further ordered to appear in person† (or through your attorney of record) at the Case Management Conference noticed above. You must be thoroughly familiar with the case and fully authorized to proceed.
4. The Direct Calendar Judge will issue orders at the conclusion of the conference that should include:
  - a. Referring to ADR and setting an ADR completion date
  - b. Dismissing or severing claims or parties
  - c. Setting a trial date.

\* Case Management Statements may be filed by E-delivery, by emailing them to the following address: [EDelivery@alameda.courts.ca.gov](mailto:EDelivery@alameda.courts.ca.gov). No fee is charged for this service. For further information, go to Direct Calendar Departments at <http://apps.alameda.courts.ca.gov/domainweb>.

† Telephonic appearances at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties may make arrangements by calling 1-888-882-6878, or faxing a service request to 1-888-882-2946. This service is subject to charges by the vendor.

**CLERK'S CERTIFICATE OF MAILING**

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice of Hearing by placing copies in envelopes addressed as shown herein and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 04/09/2013.

By

  
 \_\_\_\_\_



**Superior Court of California, County of Alameda**



**Notice of Assignment of Judge for All Purposes**

Case Number: RG13674251  
Case Title: Hugals VS Sara Lee Corporation  
Date of Filing: 04/04/2013

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to Rule 3.734 of the California Rules of Court and Title 3 Chapter 2 of the Local Rules of the Superior Court of California, County of Alameda, this action is hereby assigned by the Presiding Judge for all purposes to:

Judge:	Michael Ballachey
Department:	18
Address:	Administration Building 1221 Oak Street Oakland CA 94612
Phone Number:	(510) 267-6934
Fax Number:	(510) 267-1506
Email Address:	Dept.18@alameda.courts.ca.gov

Under direct calendaring, this case is assigned to a single judge for all purposes including trial.

Please note: In this case, any challenge pursuant to Code of Civil Procedure section 170.6 must be exercised within the time period provided by law. (See Code Civ. Proc. §§ 170.6, subd. (a)(2) and 1013.)

**NOTICE OF NONAVAILABILITY OF COURT REPORTERS:** Effective June 4, 2012, the court will not provide a court reporter for civil law and motion hearings, any other hearing or trial in civil departments, or any afternoon hearing in Department 201 (probate). Parties may arrange and pay for the attendance of a certified shorthand reporter. In limited jurisdiction cases, parties may request electronic recording.

Amended Local Rule 3.95 states: "Except as otherwise required by law, in general civil case and probate departments, the services of an official court reporter are not normally available. For civil trials, each party must serve and file a statement before the trial date indicating whether the party requests the presence of an official court reporter."

IT IS THE DUTY OF EACH PLAINTIFF AND CROSS COMPLAINANT TO SERVE A COPY OF THIS NOTICE IN ACCORDANCE WITH LOCAL RULES.

### **General Procedures**

Following assignment of a civil case to a specific department, all pleadings must be filed at the court facility where that department is located. The René C. Davidson Courthouse is the filing location for departments situated in the Alameda County Administration Building and the United States Post Office (see Local Rule, rule 1.9(d) effective as of 01/01/2013). All documents, with the exception of the original summons and the original civil complaint, shall have clearly typed on the face page of each document, under the case number, the following:

**ASSIGNED FOR ALL PURPOSES TO  
JUDGE Michael Ballachey  
DEPARTMENT 18**

All parties are expected to know and comply with the Local Rules of this Court, which are available on the Court's website at:  
<http://www.alameda.courts.ca.gov/courts/rules/index.shtml> and with the California Rules of Court, which are available at [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov).

Parties must meet and confer to discuss the effective use of mediation or other alternative dispute processes (ADR) prior to the Initial Case Management Conference. The court encourages parties to file a "Stipulation to Attend ADR and Delay Initial Case Management Conference for 90 Days". Plaintiff received that form in the ADR information package at the time the complaint was filed. The court's Web site also contains this form and other ADR information. If the parties do not stipulate to attend ADR, the parties must be prepared to discuss referral to ADR at the Initial Case Management Conference.

### **Schedule for Department 18**

The following scheduling information is subject to change at any time, without notice. Please contact the department at the phone number or email address noted above if you have questions.

- Trials generally are held: Monday through Thursday from 8:30 am - 1:30 pm
- Case Management Conferences are held: Monday, Tuesday and Thursday at 3:30 p.m.
- Initial Case Management Conferences are held on Monday, Tuesday, and Thursday at 3:30 p.m.
- The court will issue tentative orders (TCMO). Rulings are found on the Court's website as "CMC Rulings & Orders".
- Law and Motion matters are heard: Wednesday at 3:00 p.m. and Friday at 10:00 a.m.
- Settlement Conferences are heard: Calendared by the Court.
- Ex Parte matters are heard: Only at the discretion of the court. Applications and any written responses thereto are filed and submitted on the pleadings; reviewed by the court and a ruling is issued.

### **Law and Motion Procedures**

To obtain a hearing date for a Law and Motion or ex parte matter, parties must contact the department as follows:

- Motion Reservations

Email: Dept.18@alameda.courts.ca.gov  
Phone: 510-267-6934

For motion dates, contact the court by e-mail.

- **Ex Parte Matters**

Email: Dept.18@alameda.courts.ca.gov  
Phone: 510-267-6934

See instructions above pertaining to exparte applications

**Tentative Rulings**

The court may issue tentative rulings in accordance with the Local Rules. Tentative rulings will become the Court's order unless contested in accordance with the Local Rules. Tentative rulings will be available at:

- Website: [www.alameda.courts.ca.gov/domainweb](http://www.alameda.courts.ca.gov/domainweb), Calendar Information for Dept. 18
- Phone: 1-866-223-2244

Dated: 04/08/2013



Presiding Judge,  
Superior Court of California, County of Alameda

---

**CLERK'S CERTIFICATE OF MAILING**

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown on the attached Notice of Initial Case Management Conference and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 04/09/2013



By

Digital  


Deputy Clerk



## Superior Court of California, County of Alameda Alternative Dispute Resolution (ADR) Information Packet

The person who files a civil lawsuit (plaintiff) must include the ADR Information Packet with the complaint when serving the defendant. Cross complainants must serve the ADR Information Packet on any new parties named to the action.

The Court *strongly encourages* the parties to use some form of ADR before proceeding to trial. You may choose ADR by:

- Indicating your preference on Case Management Form CM-110;
- Filing the Stipulation to ADR and Delay Initial Case Management Conference for 90 Days (a local form included with the information packet); or
- Agree to ADR at your Initial Case Management Conference.

**QUESTIONS?** Call (510) 891-6055. Email [adrprogram@alameda.courts.ca.gov](mailto:adrprogram@alameda.courts.ca.gov)  
Or visit the court's website at <http://www.alameda.courts.ca.gov/courts/adr.shtml>

### What Are The Advantages Of Using ADR?

- **Faster** – Litigation can take years to complete but ADR usually takes weeks or months.
- **Cheaper** – Parties can save on attorneys' fees and litigation costs.
- **More control and flexibility** – Parties choose the ADR process appropriate for their case.
- **Cooperative and less stressful** – In mediation, parties cooperate to find a mutually agreeable resolution.
- **Preserve Relationships** – A mediator can help you effectively communicate your interests and point of view to the other side. This is an important benefit when you want to preserve a relationship.

### What Is The Disadvantage Of Using ADR?

- **You may go to court anyway** – If you cannot resolve your dispute using ADR, you may still have to spend time and money resolving your lawsuit through the courts.

### What ADR Options Are Available?

- **Mediation** – A neutral person (mediator) helps the parties communicate, clarify facts, identify legal issues, explore settlement options, and agree on a solution that is acceptable to all sides.
  - **Court Mediation Program:** Mediators do not charge fees for the first two hours of mediation. If parties need more time, they must pay the mediator's regular fees.

Some mediators ask for a deposit before mediation starts which is subject to a refund for unused time.

- **Private Mediation:** This is mediation where the parties pay the mediator's regular fees and may choose a mediator outside the court's panel.
- **Arbitration** – A neutral person (arbitrator) hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial and the rules of evidence are often relaxed. Arbitration is effective when the parties want someone other than themselves to decide the outcome.
  - **Judicial Arbitration Program (non-binding):** The judge can refer a case or the parties can agree to use judicial arbitration. The parties select an arbitrator from a list provided by the court. If the parties cannot agree on an arbitrator, one will be assigned by the court. There is no fee for the arbitrator. The arbitrator must send the decision (award of the arbitrator) to the court. The parties have the right to reject the award and proceed to trial.
  - **Private Arbitration (binding and non-binding)** occurs when parties involved in a dispute either agree or are contractually obligated. This option takes place outside of the courts and is normally binding meaning the arbitrator's decision is final.

#### **Mediation Service Programs In Alameda County**

Low cost mediation services are available through non-profit community organizations. Trained volunteer mediators provide these services. Contact the following organizations for more information:

##### **SEEDS Community Resolution Center**

1968 San Pablo Avenue, Berkeley, CA 94702-1612

Telephone: (510) 548-2377 Website: [www.seedscrc.org](http://www.seedscrc.org)

Their mission is to provide mediation, facilitation, training and education programs in our diverse communities – Services that Encourage Effective Dialogue and Solution-making.

##### **Center for Community Dispute Settlement**

291 McLeod Street, Livermore, CA 94550

Telephone: (925) 373-1035 Website: [www.trivalleymediation.com](http://www.trivalleymediation.com)

CCDS provides services in the Tri-Valley area for all of Alameda County.

##### ***For Victim/Offender Restorative Justice Services***

**Catholic Charities of the East Bay: Oakland**

433 Jefferson Street, Oakland, CA 94607

Telephone: (510) 768-3100 Website: [www.cceb.org](http://www.cceb.org)

Mediation sessions involve the youth, victim, and family members work toward a mutually agreeable restitution agreement.



ALA ADR-001

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address)  TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY  STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	
STIPULATION TO ATTEND ALTERNATIVE DISPUTE RESOLUTION (ADR) AND DELAY INITIAL CASE MANAGEMENT CONFERENCE FOR 90 DAYS	CASE NUMBER: _____

**INSTRUCTIONS:** All applicable boxes must be checked, and the specified information must be provided.

This stipulation is effective when:

- All parties have signed and filed this stipulation with the Case Management Conference Statement at least 15 days before the initial case management conference.
- A copy of this stipulation has been received by the ADR Program Administrator, 1225 Fallon Street, Oakland, CA 94612.

1. Date complaint filed: \_\_\_\_\_. An Initial Case Management Conference is scheduled for:

Date: \_\_\_\_\_ Time: \_\_\_\_\_ Department: \_\_\_\_\_

2. Counsel and all parties certify they have met and conferred and have selected the following ADR process (check one):

- ☐ Court mediation      ☐ Judicial arbitration  
☐ Private mediation      ☐ Private arbitration

3. All parties agree to complete ADR within 90 days and certify that:

- a. No party to the case has requested a complex civil litigation determination hearing;
- b. All parties have been served and intend to submit to the jurisdiction of the court;
- c. All parties have agreed to a specific plan for sufficient discovery to make the ADR process meaningful;
- d. Copies of this stipulation and self-addressed stamped envelopes are provided for returning endorsed filed stamped copies to counsel and all parties;
- e. Case management statements are submitted with this stipulation;
- f. All parties will attend ADR conferences; and,
- g. The court will not allow more than 90 days to complete ADR.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_  
 (TYPE OR PRINT NAME)      (SIGNATURE OF PLAINTIFF)

Date:

\_\_\_\_\_  
 (TYPE OR PRINT NAME)      (SIGNATURE OF ATTORNEY FOR PLAINTIFF)

Page 1 of 2

**ATTACHMENT – 1**

**ALA ADR-001**

<b>PLAINTIFF/PETITIONER:</b>	<b>CASE NUMBER.:</b>
<b>DEFENDANT/RESPONDENT:</b>	

**Date:**

_____	▶	_____
(TYPE OR PRINT NAME)		(SIGNATURE OF DEFENDANT)

**Date:**

_____	▶	_____
(TYPE OR PRINT NAME)		(SIGNATURE OF ATTORNEY FOR DEFENDANT)

## Exhibit H



THEODORA R. LEE, Bar No. 129892  
KAI-CHING CHA, Bar No. 218738  
LITTLER MENDELSON, P.C.  
650 California Street  
20th Floor  
San Francisco, CA 94108.2693  
Telephone: 415.433.1940  
Fax No.: 415.399.8490

Attorneys for Defendants  
SARA LEE CORPORATION, EARTHGRAINS  
BAKING COMPANIES, INC. AND BIMBO  
BAKERIES USA, INC.

**ENDORSED  
FILED  
ALAMEDA COUNTY**

**MAY 23 2013**

CLERK OF THE SUPERIOR COURT  
By, Esther Coleman Deputy

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ALAMEDA  
UNLIMITED CIVIL JURISDICTION

MOHAMED HUGAIS,

Plaintiff,

v.

SARA LEE CORPORATION, a Maryland  
corporation doing business in California;  
EARTHGRAINS BAKING COMPANY,  
INC., a Delaware corporation doing  
business in California; BIMBO  
BAKERIES USA, INC., a Delaware  
corporation doing business in California;  
MARTY BAKER, an individual; RIC  
DIAZ, an individual, and DOES 1 through  
50, inclusive,

Defendants.

Case No. RG 13674251

ASSIGNED FOR ALL PURPOSES TO JUDGE  
MICHAEL BALLACHEY

**DEFENDANTS' GENERAL DENIAL AND  
AFFIRMATIVE DEFENSES**

Trial Date: None Set  
Complaint Filed: April 4, 2013

COME NOW Defendants SARA LEE CORPORATION, EARTHGRAINS BAKING  
COMPANIES, INC. AND BIMBO BAKERIES USA, INC. ("Defendants"), and hereby answers  
Plaintiff Mohamed Hugais' ("Hugais" or "Plaintiff") Unverified Complaint pursuant to section  
431.30(b) of the California Code of Civil Procedure as follows:

Defendants deny generally each and every allegation contained in Plaintiff's  
Unverified Complaint, conjunctively and disjunctively, and further denies that Plaintiff has sustained  
any damages at all or that Plaintiff is entitled to any relief whatsoever.

DEFS' GENERAL DENIAL AND AFFIRMATIVE DEFENSES (CASE NO. RG 13674251)

**AFFIRMATIVE DEFENSES**

In further answer to the Complaint, and as separate and distinct affirmative and other defenses, Defendants allege the following defenses. In asserting these defenses, Defendants do not assume the burden of proof as to any matter that, as a matter of law, is Plaintiff's burden to prove.

1. AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants allege that Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action and fails to set forth a claim upon which relief may be granted.

2. AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants allege that the Court lacks jurisdiction over any claims of discrimination or denial of other rights that are not like or reasonably related to the allegations in Plaintiff's complaint filed with the California Department of Fair Employment and Housing or any other governmental agency.

3. AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants allege that Plaintiff failed to properly exhaust his administrative remedies, and that such failure bars this Complaint in whole or in part. Defendants allege that to the extent the claim is governed by the California Department of Fair Employment and Housing as set out in California Government Code section 12960, Plaintiff has failed to exhaust his administrative remedies with the California Department of Fair Employment and Housing and such failure bars Plaintiff's Complaint with regard to any claim or cause of action brought pursuant to the California Fair Employment and Housing Act outside the scope of any complaint filed by Plaintiff with the California Department of Fair Employment and Housing.

4. AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants allege that insofar as Plaintiff seeks to recover under FEHA for alleged incidents prior to one year before the filing of his administrative complaint, Plaintiff is not entitled to any relief for any such incidents.

5. AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants allege that Plaintiff failed to adequately exhaust all of the internal remedies available to him under the applicable collective bargaining agreement or otherwise, and that such failure bars his Complaint in whole or in part.

1           6. AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants  
2 allege that Plaintiff unreasonably failed to take advantage of any preventative or corrective  
3 opportunities provided by Defendants or to otherwise avoid harm. Thus, Plaintiff's Complaint is  
4 barred by the doctrine of avoidable consequences.

5           7. AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
6 Defendants allege that, all or portions of Plaintiff's claims are barred by the applicable statutes of  
7 limitation, including, but not limited to, Government Code Sections 12960 and 12965(b) and the  
8 two-year limitations period contained in California Code of Civil Procedure Section 335.1; the three-  
9 year limitations period contained in California Code of Civil Procedure section 338(a); the one-year  
10 limitations period governing recovery of statutory penalties contained in California Code of Civil  
11 Procedure sections 340(a-b); and/or the six-month limitations period provided by the Labor-  
12 Management Relations Act, 29 U.S.C. § 160(b).

13           8. AS AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
14 Defendants allege that, all or portions of Plaintiff's claims are barred by the doctrine of unjust  
15 enrichment.

16           9. AS A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants  
17 allege that, at all times, all actions taken with regard to Plaintiff, if any actions were taken with  
18 regard to Plaintiff, were just, fair, honest, in good faith, privileged, without discrimination or  
19 retaliation, based upon legitimate business reasons and were based upon all relevant facts and  
20 circumstances known by Defendants at the time of the actions.

21           10. AS A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants  
22 allege that all actions taken with respect to Plaintiff were taken, and would also have been taken, for  
23 legitimate, good faith, non-discriminatory and non-retaliatory reasons, even if an unlawful  
24 motivation may have existed, that unlawful motivation was not a determinative factor.

25           11. AS AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
26 Defendants allege that, assuming *arguendo*, Plaintiff's race was a factor in Defendants' employment  
27 decision, the same decision would have been made even if Plaintiff's race were not considered.  
28

1           12. AS A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
2 Defendants allege that all actions taken with respect to Plaintiff were reasonably necessary for the  
3 normal operation of Defendants' business and were based on job-related factors that were consistent  
4 with business necessity.

5           13. AS A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
6 Defendants allege that, assuming *arguendo*, Plaintiff was treated differently from other employees,  
7 such treatment was fully justified because of differences in individual duties, skill, effort,  
8 responsibility, differences in working conditions and/or differences in other reasonable factors other  
9 than his race.

10           14. AS A FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
11 Defendants allege that, it promulgated an anti-discrimination policy and complaint procedure which  
12 was communicated to Plaintiff and all of Defendants' employees, and Defendants exercised  
13 reasonable care to prevent and correct promptly any inappropriate conduct. Defendants conducted a  
14 reasonable and good faith investigation of Plaintiff's alleged complaint of alleged offensive conduct,  
15 if any, including any complaint of discriminatory or retaliatory or harassing behavior and took all  
16 necessary and appropriate action in accordance with California Government Code § 12940 *et seq.*  
17 and other statutory provisions and/or Plaintiff unreasonably failed to take advantage of the  
18 established complaint procedures, failed to take advantage of other preventative or corrective  
19 opportunities provided by Defendants, and otherwise failed to avoid harm thereby limiting any  
20 damages to which Plaintiff otherwise might be entitled to recover.

21           15. AS A FIFTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
22 Defendants allege that, assuming *arguendo*, the alleged discriminatory, harassing and/or unlawful  
23 conduct occurred, Defendants took immediate and appropriate corrective action to stop the  
24 discriminatory, harassing and/or unlawful conduct from occurring.

25           16. AS A SIXTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
26 Defendants allege that it did not violate any statutory duties imposed upon it by California  
27 Government Code section 12940, *et seq.*

28



1           17. AS A SEVENTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
2 Defendants allege that it has satisfied its obligations to ensure a workplace free of discrimination,  
3 harassment and retaliation.

4           18. AS AN EIGHTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
5 Defendants allege that Plaintiff's Complaint is preempted to the extent that he seeks a remedy for  
6 any alleged mental, emotional or physical injuries, illnesses or disabilities, as those claims are  
7 preempted by the exclusivity provisions of the California Workers' Compensation Act, California  
8 Labor Code § 3200 *et seq.* Any compensable injury to Plaintiff occurred at a time when Plaintiff  
9 and Defendants were subject to the provisions of the California Workers' Compensation Act.

10           19. AS A NINETEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
11 Defendants allege that Plaintiff failed to perform his employment obligations in conformity with  
12 applicable custom and practices, directions, training policies, and statutory duties, including but not  
13 limited to those duties imposed pursuant to California Labor Code sections 2854, 2856, 2857, 2858  
14 and 2859.

15           20. AS A TWENTIETH, SEPARATE AND AFFIRMATIVE DEFENSE,  
16 Defendants allege that to the extent it acquires evidence which, had it known about said evidence  
17 during Plaintiff's employment, would have resulted in the termination of his employment, Plaintiff is  
18 not entitled to any damages whatsoever or, at the very least, Plaintiff is not entitled to any damages  
19 subsequent to the time that Defendants acquired the evidence.

20           21. AS A TWENTY-FIRST, SEPARATE AND AFFIRMATIVE DEFENSE,  
21 Defendants allege that Plaintiff's Complaint is barred in whole or in part because Plaintiff was  
22 careless, negligent, and/or otherwise at fault in the matters alleged in the Complaint, and the  
23 resulting injuries sustained by Plaintiff, if any, were proximately caused and contributed to by  
24 Plaintiff.

25           22. AS A TWENTY-SECOND, SEPARATE AND AFFIRMATIVE DEFENSE,  
26 Defendants allege that any harm or damage allegedly suffered by Plaintiff was caused by his own  
27 intentional and/or negligent actions and/or omissions.

28

1           23. AS A TWENTY-THIRD, SEPARATE AND AFFIRMATIVE DEFENSE,  
2 Defendants allege that Plaintiff's claims are barred due to the fact that Plaintiff participated in,  
3 consented to and/or welcomed any alleged conduct complained of.

4           24. AS A TWENTY-FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
5 Defendants allege that any recovery Plaintiff may be entitled to herein should be offset and/or  
6 reduced by the proportionate amount of Plaintiff's negligence, fault, bad faith and breach of common  
7 law duties.

8           25. AS A TWENTY-FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
9 Defendants allege that all or portions of Plaintiff's claims are barred by the equitable doctrines of  
10 unclean hands, waiver, estoppel, and/or laches

11           26. AS A TWENTY-SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
12 Defendants allege that Plaintiff has failed to mitigate his damages.

13           27. AS AN TWENTY-SEVENTH, SEPARATE AND AFFIRMATIVE  
14 DEFENSE, Defendants allege that to the extent Plaintiff has made any claim for special damages,  
15 Plaintiff has failed to state such claim with the requisite specificity.

16           28. AS AN TWENTY-EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
17 Defendants allege that Plaintiff is precluded from recovering punitive damages from Defendants,  
18 either in whole or in part, under the applicable provisions of California Civil Code section 3294, or  
19 such other statutes that may be applicable.

20           29. AS A TWENTY-NINTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
21 Defendants allege that they did not act with malice, oppression or fraud nor did they engage in any  
22 despicable acts that would warrant the imposition of punitive damages. Thus, Plaintiff's Complaint  
23 fails to state facts sufficient to support a claim for punitive damages.

24           30. AS A THIRTIETH, SEPARATE AND AFFIRMATIVE DEFENSE,  
25 Defendants allege that any requirement that permits imposition of punitive or exemplary damages  
26 which are in effect criminal penalties, upon proof of a standard less than a standard "beyond a  
27 reasonable doubt," or which denies to Defendants the right given to Defendants in criminal  
28 proceedings, violates Defendants' rights under the First, Fifth, Sixth, Eighth and Fourteenth

1 Amendments of the United States Constitution and under the Constitution of the State of California.

2 31. AS A THIRTY-FIRST, SEPARATE AND AFFIRMATIVE DEFENSE,  
3 Defendants allege that Plaintiff is not entitled to recover from Defendants punitive or exemplary  
4 damages herein for the alleged fraudulent, oppressive or malicious acts referred to in the Complaint  
5 on the grounds that said acts, if any, were performed by an employee or employees of Defendants  
6 and none of the Defendants' officers, directors or managing agents committed the alleged acts, nor  
7 authorized them, nor ratified them, nor did Defendants or its officers, or managing agents have  
8 advance knowledge of the unfitness, if any, of the employee or employees who allegedly committed  
9 said acts, nor did Defendants employ said employee or employees with a conscious disregard of the  
10 rights or safety of others.

11 32. AS A THIRTY-SECOND, SEPARATE AND AFFIRMATIVE DEFENSE,  
12 Defendants allege that the Complaint is uncertain.

13 33. AS A THIRTY-THIRD, SEPARATE AND AFFIRMATIVE DEFENSE,  
14 Defendants allege that the Complaint fails to properly state a claim on which prejudgment interest  
15 may be awarded because the amount of any damages is not reasonably certain.

16 34. AS A THIRTY-FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
17 Defendants allege that if Plaintiff suffered any emotional distress, his emotional distress was caused  
18 by factors other than Plaintiff's employment, the actions of Defendants, or anyone acting on  
19 Defendants' behalf.

20 35. AS A THIRTY-FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
21 Defendants allege that if Plaintiff suffered any emotional distress, Plaintiff contributed to his own  
22 distress and, by reason of his contribution, any remedy to which he might otherwise be entitled must  
23 be denied or reduced accordingly.

24 36. AS A THIRTY-SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
25 Defendants allege that any award to Plaintiff must be offset by all sums heretofore received by  
26 Plaintiff from other sources, including but not limited to, unemployment insurance, private  
27 insurance, state disability insurance, Social Security disability payments, workers' compensation  
28 payments, and any sums earned by Plaintiff in other employment.

1           37. AS A THIRTY-SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
2 Defendants allege that the Complaint fails to properly state a claim for costs or attorneys' fees under  
3 Government Code section 12965(b), Civil Code section 1021.5 or any other basis.

4           38. AS A THIRTY-EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
5 Defendants allege that the Complaint fails to properly state a claim for recovery of compensatory or  
6 general damages, or recovery of damages on any basis.

7           39. AS A THIRTY-NINTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
8 Defendants allege that it is not vicariously liable for any act or omission of any other person, by way  
9 of *respondeat superior*, agency or otherwise.

10           40. AS A FORTIETH, SEPARATE AND AFFIRMATIVE DEFENSE,  
11 Defendants allege that Plaintiff's Complaint is barred in whole or in part because Defendants'  
12 conduct was privileged at all material times.

13           41. AS A FORTY-FIRST, SEPARATE AND AFFIRMATIVE DEFENSE,  
14 Defendants allege that, assuming *arguendo*, any employee of Sara Lee Corporation, Earthgrains  
15 Baking Companies, Inc. or Bimbo Bakeries USA, Inc. engaged in any unlawful conduct toward  
16 Plaintiff (which Defendants deny), Defendants neither knew nor reasonably should have known of  
17 said unlawful conduct.

18           42. AS A FORTY-SECOND, SEPARATE AND AFFIRMATIVE DEFENSE,  
19 Defendants allege that, assuming *arguendo*, any employee or agent of Defendants engaged in any  
20 unlawful conduct toward Plaintiff (which Defendants deny), such conduct was contrary to  
21 Defendants' express policies and beyond the course and scope of that individual's employment or  
22 agency relationship and cannot be attributed to Defendants, and Defendants cannot be held liable for  
23 any such actions.

24           43. AS A FORTY-THIRD, SEPARATE AND AFFIRMATIVE DEFENSE,  
25 Defendants allege that Plaintiff's claims are unreasonable and/or asserted against Defendants in bad  
26 faith, and are frivolous, and for that reason justify an award of attorneys' fees and costs against  
27 Plaintiff pursuant to the California Code of Civil Procedure section 128.7 and pursuant to the  
28 California Rules of Court.



1           44. AS A FORTY-FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
2 Defendants allege that Plaintiff's claims are preempted by the National Labor Relations Act and/or  
3 the Labor Management Relations Act.

4           45. AS A FORTY-FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
5 Defendants Sara Lee Corporation and Bimbo Bakeries USA, Inc. allege that at no time did they  
6 employ Plaintiff, and accordingly, they are not proper defendants in this action.

7           46. AS A FORTY-SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
8 Defendants reserve the right to amend its answer should it later discover facts demonstrating the  
9 existence of new and/or additional affirmative defenses, and/or should a change in the law support  
10 the inclusion of new and/or additional defenses.

11           47. AS A FORTY-SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
12 Defendants allege that any recovery on Plaintiff's Complaint, and each and every purported claim  
13 alleged therein, is barred because Defendants' conduct was based on legitimate, non-discriminatory  
14 and non-retaliatory business reasons and not based upon Plaintiff's alleged exercise of his rights  
15 under the California Family Rights Act ("CFRA").

16           48. AS A FORTY-EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
17 Defendants allege that at all relevant times, they had a good faith reason, based on reasonable  
18 grounds, for believing its actions did not violate or interfere with Plaintiff's rights under the  
19 California Family Rights Act ("CFRA") [Cal. Gov't Code § 12945.1, et seq.].

20           49. AS A FORTY-NINTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
21 Defendants allege that any recovery on Plaintiff's Complaint, or any purported claim alleged therein,  
22 is barred because Plaintiff was not discriminated or retaliated against and/or subjected to an adverse  
23 employment action because of his alleged exercise of his rights under the CFRA.

24           50. AS A FIFTIETH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants  
25 allege that Plaintiff's California Labor Code section 6310 claim is barred to the extent that Plaintiff  
26 failed to timely invoke and/or fully exhaust his administrative remedies, including but not limited to,  
27 the filing of a complaint with the California Labor Commissioner pursuant to Labor Code section  
28 98.7, as required by a litigant seeking damages pursuant to these provisions. *See Campbell v.*

1 *Regents of the Univ. of Cal.*, 35 Cal.4th 311, 333-34 (2005).

2 51. AS A FIFTY-FIRST, SEPARATE AND AFFIRMATIVE DEFENSE,  
3 Defendants allege that the Complaint and each and every cause of action alleged therein is barred  
4 because all actions taken by Defendants with respect to Plaintiff were, at all times relevant to this  
5 action, taken in good faith without any intent to retaliate or discriminate against Plaintiff in any  
6 manner prohibited by California Labor Code section 6310, or any other law or public policy.

7 52. AS A FIFTY-SECOND, SEPARATE AND AFFIRMATIVE DEFENSE,  
8 Defendants allege that any violation of the Labor Code or an order of the Industrial Welfare  
9 Commission was an act or omission made in good faith and Defendant had reasonable grounds for  
10 believing that the act or omission was not a violation of the Labor Code or any order of the Industrial  
11 Welfare Commission and that, accordingly, it has not willfully or intentionally failed to pay  
12 additional compensation to Plaintiff.

13 53. AS A FIFTY-THIRD, SEPARATE AND AFFIRMATIVE DEFENSE,  
14 Defendants allege that Plaintiff was properly compensated for all hours of work in accordance with  
15 applicable law.

16 54. AS A FIFTY-FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
17 Defendants are informed and believe that further investigation and discovery will reveal, and on that  
18 basis allege, that any monies alleged to be owed to Plaintiff have been paid in full and any  
19 obligations they may have owed to Plaintiff has been paid or otherwise satisfied in full in  
20 compliance with the Labor Code.

21 55. AS A FIFTY-FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
22 Defendants allege that they have complied with all applicable Industrial Welfare Commission Orders  
23 regulating wages, hours and working conditions with respect to Plaintiff, barring Plaintiff from being  
24 eligible for any relief pursuant to the Labor Code.

25 56. AS A FIFTY-SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
26 Defendants allege that Plaintiff is not entitled to any penalty award under California Labor Code  
27 section 1194 because Defendants did not willfully fail to comply with the compensation provisions  
28 of the California Labor Code, or the applicable Wage Orders, but rather acted in good faith and had

10.

1 reasonable grounds for believing they did not violate them.

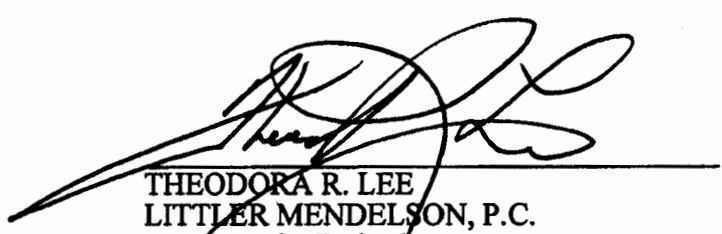
2 57. AS A FIFTY-SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
3 Defendants presently have insufficient knowledge or information upon which to form a belief as to  
4 whether additional, as yet unstated, defenses may be warranted and reserve the right to assert  
5 additional defenses or affirmative defenses in the event discovery and/or further investigation  
6 indicates such defenses are appropriate.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Defendants pray for judgment from the Court that:

- 9 1. Plaintiff takes nothing by this action;  
10 2. The Complaint, and each purported cause of action alleged therein, be  
11 dismissed in its entirety with prejudice;  
12 3. Defendants be awarded its costs of suit incurred herein;  
13 4. Defendants be awarded their attorneys' fees pursuant to law, including but not  
14 limited to California Code of Civil Procedure section 1033.5(a)(10)(B); and  
15 5. Defendants be awarded such other and further relief as the Court deems just  
16 and proper.

17 Dated: May 23, 2013

18   
19 THEODORA R. LEE  
20 LITTLER MENDELSON, P.C.  
21 Attorneys for Defendants  
22 SARA LEE CORPORATION,  
EARTHGRAINS BAKING COMPANIES,  
INC. AND BIMBO BAKERIES USA, INC.

23 Firmwide:120473935.1 046057.1060

**PROOF OF SERVICE BY MAIL**

I am employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 650 California Street, 20th Floor, San Francisco, California 94108.2693. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On May 23, 2013, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

**DEFENDANTS' GENERAL DENIAL AND AFFIRMATIVE DEFENSES**

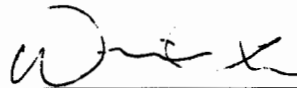
in a sealed envelope, postage fully paid, addressed as follows:

Christopher B. Dolan  
Michael DePaul  
Ghazaleh Modarresi  
The Dolan Law Firm  
The Dolan Building  
1438 Market Street  
San Francisco, CA 94102

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 23, 2013, at San Francisco, California.



Winnie Lee



## **Exhibit I**

THEODORA R. LEE, Bar No. 129892  
 KAI-CHING CHA, Bar No. 218738  
 LITTLER MENDELSON, P.C.  
 650 California Street  
 20th Floor  
 San Francisco, CA 94108.2693  
 Telephone: 415.433.1940  
 Fax No.: 415.399.8490

**ENDORSED  
 FILED  
 ALAMEDA COUNTY**

**MAY 23 2013**

CLERK OF THE SUPERIOR COURT

By Esther Coleman Deputy

Attorneys for Defendants  
 SARA LEE CORPORATION, EARTHGRAINS  
 BAKING COMPANIES, INC., BIMBO  
 BAKERIES USA, INC., MARTY BAKER and RIC  
 DIAZ

**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF ALAMEDA**

**UNLIMITED CIVIL JURISDICTION**

MOHAMED HUGAIS,

Plaintiff,

v.

SARA LEE CORPORATION, a Maryland  
 corporation doing business in California;  
 EARTHGRAINS BAKING COMPANY,  
 INC., a Delaware corporation doing  
 business in California; BIMBO  
 BAKERIES USA, INC., a Delaware  
 corporation doing business in California;  
 MARTY BAKER, an individual; RIC  
 DIAZ, an individual, and DOES 1 through  
 50, inclusive,

Defendants.

Case No. RG 13674251

ASSIGNED FOR ALL PURPOSES TO JUDGE  
 MICHAEL BALLACHEY

**DEFENDANTS' MOTION FOR  
 PEREMPTORY DISQUALIFICATION  
 PURSUANT TO CODE OF CIVIL  
 PROCEDURE § 170.6; DECLARATION OF  
 THEODORA R. LEE**

Trial Date: None Set  
 Complaint Filed: April 4, 2013

**TO THE HONORABLE JUDGE OF THE SUPERIOR COURT, AND TO PLAINTIFF AND  
 HIS ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that Defendants SARA LEE CORPORATION,  
 EARTHGRAINS BAKING COMPANIES, INC. and BIMBO BAKERIES USA, INC. (collectively,  
 "Defendants") hereby move, pursuant to Code of Civil Procedure section 170.6(a)(2), that this case,  
 which involves contested issues of law and/or fact, and which has been assigned to the Honorable  
 Michael Ballachey for all purposes, be reassigned from the Honorable Michael Ballachey and that

no matters hereinafter arising in this case be heard by or assigned to the Honorable Michael Ballachey on the grounds that said judge is prejudiced against Defendants or the interests of Defendants in this action, such that Defendants believe that they cannot have a fair and impartial trial before said judge. *See* Declaration of Theodora R. Lee ("Lee Decl.") ¶ 4.

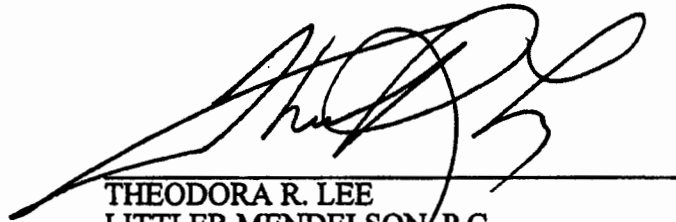
"If a peremptory challenge motion in proper form is timely filed under section 170.6, the court must accept it without further inquiry." *Stephens v. Super. Ct.*, 96 Cal. App. 4th 54, 59 (2002); *see also Davcon, Inc. v. Roberts & Morgan*, 110 Cal. App. 4th 1355, 1361-62 (2003) (peremptory challenge is effective "without any further act or proof" when accepted by the judge).

This motion is timely, as it is made within fifteen (15) days after Defendants have first appeared in this case; their first appearance was made when they filed their respective Answers on May 23, 2013. *See* supporting Declaration of Theodora R. Lee, ¶ 2 and Exh. A thereto. *See also* Cal. Civ. Proc. Code § 170.6; Cal. Gov't Code § 68616; *Motion Picture and Television Fund Hosp. v. Superior Ct. of Los Angeles County*, 88 Cal. App. 4th 488 (2001); *Cybermedia, Inc. v. Superior Ct. of Los Angeles County*, 72 Cal. App. 4th 910 (1999). Defendants have not previously made a peremptory challenge to a judge in this action, and thus this request shall be properly granted. *Id.* ¶ 3.

This motion is based upon the matters contained herein, Section 170.6 of the California Code of Civil Procedure, and the supporting Declaration of Theodora R. Lee, filed and served concurrently herewith.

WHEREFORE, the Court is respectfully requested to grant the relief requested by this motion.

Dated: May 23, 2013



THEODORA R. LEE  
LITTLER MENDELSON, P.C.  
Attorneys for Defendants  
SARA LEE CORPORATION,  
EARTHGRAINS BAKING COMPANIES,  
INC., BIMBO BAKERIES USA, INC.,  
MARTY BAKER and RIC DIAZ

**DECLARATION OF THEODORA R. LEE**

I, Theodora R. Lee, declare as follows:

1. I am a member of the State Bar of California and am admitted to practice before this Court. I am a shareholder with the law firm of Littler Mendelson, P.C., counsel of record for Defendants SARA LEE CORPORATION, EARTHGRAINS BAKING COMPANIES, INC. and BIMBO BAKERIES USA, INC. (collectively, "Defendants"). I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would testify competently to each such fact.

2. On May 23, 2013, Defendants first appeared in this action; at that time, they filed their respective Answers to the Complaint in this case. Attached hereto as Exhibit A is a copy of the Answer reflecting the date in which it was filed with the Court.

3. Defendants have not previously made a peremptory challenge to a judge in this action.

4. I am informed and believe that the Honorable Michael Ballachey, the judge to whom this matter has been assigned for all purposes, is prejudiced against Defendants such that Defendants cannot, or believe that they cannot, have a fair and impartial trial before said Judge.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 23rd day of May 2013, at San Francisco, California.



THEODORA R. LEE

Firmwide:120099583.2 046057.1060



# **EXHIBIT A**

THEODORA R. LEE, Bar No. 129892  
KAI-CHING CHA, Bar No. 218738  
LITTLER MENDELSON, P.C.  
650 California Street  
20th Floor  
San Francisco, CA 94108.2693  
Telephone: 415.433.1940  
Fax No.: 415.399.8490

Attorneys for Defendants  
SARA LEE CORPORATION, EARTHGRAINS  
BAKING COMPANIES, INC. AND BIMBO  
BAKERIES USA, INC.

**ENDORSED  
FILED  
ALAMEDA COUNTY**

**MAY 23 2013**

CLERK OF THE SUPERIOR COURT  
By: Esther Coleman Deputy

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ALAMEDA  
UNLIMITED CIVIL JURISDICTION**

**MOHAMED HUGAIS,**  
  
**Plaintiff,**

**v.**

**SARA LEE CORPORATION, a Maryland  
corporation doing business in California;  
EARTHGRAINS BAKING COMPANY,  
INC., a Delaware corporation doing  
business in California; BIMBO  
BAKERIES USA, INC., a Delaware  
corporation doing business in California;  
MARTY BAKER, an individual; RIC  
DIAZ, an individual, and DOES 1 through  
50, inclusive,**  
  
**Defendants.**

**Case No. RG 13674251**

**ASSIGNED FOR ALL PURPOSES TO JUDGE  
MICHAEL BALLACHEY**

**DEFENDANTS' GENERAL DENIAL AND  
AFFIRMATIVE DEFENSES**

**Trial Date: None Set  
Complaint Filed: April 4, 2013**

**COME NOW Defendants SARA LEE CORPORATION, EARTHGRAINS BAKING  
COMPANIES, INC. AND BIMBO BAKERIES USA, INC. ("Defendants"), and hereby answers  
Plaintiff Mohamed Hugais' ("Hugais" or "Plaintiff") Unverified Complaint pursuant to section  
431.30(b) of the California Code of Civil Procedure as follows:**

**Defendants deny generally each and every allegation contained in Plaintiff's  
Unverified Complaint, conjunctively and disjunctively, and further denies that Plaintiff has sustained  
any damages at all or that Plaintiff is entitled to any relief whatsoever.**

**DEFS' GENERAL DENIAL AND AFFIRMATIVE DEFENSES (CASE NO. RG 13674251)**

**AFFIRMATIVE DEFENSES**

In further answer to the Complaint, and as separate and distinct affirmative and other defenses, Defendants allege the following defenses. In asserting these defenses, Defendants do not assume the burden of proof as to any matter that, as a matter of law, is Plaintiff's burden to prove.

1. AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants allege that Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action and fails to set forth a claim upon which relief may be granted.

2. AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants allege that the Court lacks jurisdiction over any claims of discrimination or denial of other rights that are not like or reasonably related to the allegations in Plaintiff's complaint filed with the California Department of Fair Employment and Housing or any other governmental agency.

3. AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants allege that Plaintiff failed to properly exhaust his administrative remedies, and that such failure bars this Complaint in whole or in part. Defendants allege that to the extent the claim is governed by the California Department of Fair Employment and Housing as set out in California Government Code section 12960, Plaintiff has failed to exhaust his administrative remedies with the California Department of Fair Employment and Housing and such failure bars Plaintiff's Complaint with regard to any claim or cause of action brought pursuant to the California Fair Employment and Housing Act outside the scope of any complaint filed by Plaintiff with the California Department of Fair Employment and Housing.

4. AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants allege that insofar as Plaintiff seeks to recover under FEHA for alleged incidents prior to one year before the filing of his administrative complaint, Plaintiff is not entitled to any relief for any such incidents.

5. AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants allege that Plaintiff failed to adequately exhaust all of the internal remedies available to him under the applicable collective bargaining agreement or otherwise, and that such failure bars his Complaint in whole or in part.

1           6. AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants  
2 allege that Plaintiff unreasonably failed to take advantage of any preventative or corrective  
3 opportunities provided by Defendants or to otherwise avoid harm. Thus, Plaintiff's Complaint is  
4 barred by the doctrine of avoidable consequences.

5           7. AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
6 Defendants allege that, all or portions of Plaintiff's claims are barred by the applicable statutes of  
7 limitation, including, but not limited to, Government Code Sections 12960 and 12965(b) and the  
8 two-year limitations period contained in California Code of Civil Procedure Section 335.1; the three-  
9 year limitations period contained in California Code of Civil Procedure section 338(a); the one-year  
10 limitations period governing recovery of statutory penalties contained in California Code of Civil  
11 Procedure sections 340(a-b); and/or the six-month limitations period provided by the Labor-  
12 Management Relations Act, 29 U.S.C. § 160(b).

13           8. AS AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
14 Defendants allege that, all or portions of Plaintiff's claims are barred by the doctrine of unjust  
15 enrichment.

16           9. AS A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants  
17 allege that, at all times, all actions taken with regard to Plaintiff, if any actions were taken with  
18 regard to Plaintiff, were just, fair, honest, in good faith, privileged, without discrimination or  
19 retaliation, based upon legitimate business reasons and were based upon all relevant facts and  
20 circumstances known by Defendants at the time of the actions.

21           10. AS A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants  
22 allege that all actions taken with respect to Plaintiff were taken, and would also have been taken, for  
23 legitimate, good faith, non-discriminatory and non-retaliatory reasons, even if an unlawful  
24 motivation may have existed, that unlawful motivation was not a determinative factor.

25           11. AS AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
26 Defendants allege that, assuming *arguendo*, Plaintiff's race was a factor in Defendants' employment  
27 decision, the same decision would have been made even if Plaintiff's race were not considered.

28



12. AS A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants allege that all actions taken with respect to Plaintiff were reasonably necessary for the normal operation of Defendants' business and were based on job-related factors that were consistent with business necessity.

13. AS A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants allege that, assuming *arguendo*, Plaintiff was treated differently from other employees, such treatment was fully justified because of differences in individual duties, skill, effort, responsibility, differences in working conditions and/or differences in other reasonable factors other than his race.

14. AS A FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants allege that, it promulgated an anti-discrimination policy and complaint procedure which was communicated to Plaintiff and all of Defendants' employees, and Defendants exercised reasonable care to prevent and correct promptly any inappropriate conduct. Defendants conducted a reasonable and good faith investigation of Plaintiff's alleged complaint of alleged offensive conduct, if any, including any complaint of discriminatory or retaliatory or harassing behavior and took all necessary and appropriate action in accordance with California Government Code § 12940 *et seq.* and other statutory provisions and/or Plaintiff unreasonably failed to take advantage of the established complaint procedures, failed to take advantage of other preventative or corrective opportunities provided by Defendants, and otherwise failed to avoid harm thereby limiting any damages to which Plaintiff otherwise might be entitled to recover.

15. AS A FIFTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants allege that, assuming *arguendo*, the alleged discriminatory, harassing and/or unlawful conduct occurred, Defendants took immediate and appropriate corrective action to stop the discriminatory, harassing and/or unlawful conduct from occurring.

16. AS A SIXTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants allege that it did not violate any statutory duties imposed upon it by California Government Code section 12940, *et seq.*

1           17. AS A SEVENTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
2 Defendants allege that it has satisfied its obligations to ensure a workplace free of discrimination,  
3 harassment and retaliation.

4           18. AS AN EIGHTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
5 Defendants allege that Plaintiff's Complaint is preempted to the extent that he seeks a remedy for  
6 any alleged mental, emotional or physical injuries, illnesses or disabilities, as those claims are  
7 preempted by the exclusivity provisions of the California Workers' Compensation Act, California  
8 Labor Code § 3200 *et seq.* Any compensable injury to Plaintiff occurred at a time when Plaintiff  
9 and Defendants were subject to the provisions of the California Workers' Compensation Act.

10           19. AS A NINETEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
11 Defendants allege that Plaintiff failed to perform his employment obligations in conformity with  
12 applicable custom and practices, directions, training policies, and statutory duties, including but not  
13 limited to those duties imposed pursuant to California Labor Code sections 2854, 2856, 2857, 2858  
14 and 2859.

15           20. AS A TWENTIETH, SEPARATE AND AFFIRMATIVE DEFENSE,  
16 Defendants allege that to the extent it acquires evidence which, had it known about said evidence  
17 during Plaintiff's employment, would have resulted in the termination of his employment, Plaintiff is  
18 not entitled to any damages whatsoever or, at the very least, Plaintiff is not entitled to any damages  
19 subsequent to the time that Defendants acquired the evidence.

20           21. AS A TWENTY-FIRST, SEPARATE AND AFFIRMATIVE DEFENSE,  
21 Defendants allege that Plaintiff's Complaint is barred in whole or in part because Plaintiff was  
22 careless, negligent, and/or otherwise at fault in the matters alleged in the Complaint, and the  
23 resulting injuries sustained by Plaintiff, if any, were proximately caused and contributed to by  
24 Plaintiff.

25           22. AS A TWENTY-SECOND, SEPARATE AND AFFIRMATIVE DEFENSE,  
26 Defendants allege that any harm or damage allegedly suffered by Plaintiff was caused by his own  
27 intentional and/or negligent actions and/or omissions.

28

1           23. AS A TWENTY-THIRD, SEPARATE AND AFFIRMATIVE DEFENSE,  
2 Defendants allege that Plaintiff's claims are barred due to the fact that Plaintiff participated in,  
3 consented to and/or welcomed any alleged conduct complained of.

4           24. AS A TWENTY-FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
5 Defendants allege that any recovery Plaintiff may be entitled to herein should be offset and/or  
6 reduced by the proportionate amount of Plaintiff's negligence, fault, bad faith and breach of common  
7 law duties.

8           25. AS A TWENTY-FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
9 Defendants allege that all or portions of Plaintiff's claims are barred by the equitable doctrines of  
10 unclean hands, waiver, estoppel, and/or laches

11           26. AS A TWENTY-SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
12 Defendants allege that Plaintiff has failed to mitigate his damages.

13           27. AS AN TWENTY-SEVENTH, SEPARATE AND AFFIRMATIVE  
14 DEFENSE, Defendants allege that to the extent Plaintiff has made any claim for special damages,  
15 Plaintiff has failed to state such claim with the requisite specificity.

16           28. AS AN TWENTY-EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
17 Defendants allege that Plaintiff is precluded from recovering punitive damages from Defendants,  
18 either in whole or in part, under the applicable provisions of California Civil Code section 3294, or  
19 such other statutes that may be applicable.

20           29. AS A TWENTY-NINTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
21 Defendants allege that they did not act with malice, oppression or fraud nor did they engage in any  
22 despicable acts that would warrant the imposition of punitive damages. Thus, Plaintiff's Complaint  
23 fails to state facts sufficient to support a claim for punitive damages.

24           30. AS A THIRTIETH, SEPARATE AND AFFIRMATIVE DEFENSE,  
25 Defendants allege that any requirement that permits imposition of punitive or exemplary damages  
26 which are in effect criminal penalties, upon proof of a standard less than a standard "beyond a  
27 reasonable doubt," or which denies to Defendants the right given to Defendants in criminal  
28 proceedings, violates Defendants' rights under the First, Fifth, Sixth, Eighth and Fourteenth



1 Amendments of the United States Constitution and under the Constitution of the State of California.

2 31. AS A THIRTY-FIRST, SEPARATE AND AFFIRMATIVE DEFENSE,  
3 Defendants allege that Plaintiff is not entitled to recover from Defendants punitive or exemplary  
4 damages herein for the alleged fraudulent, oppressive or malicious acts referred to in the Complaint  
5 on the grounds that said acts, if any, were performed by an employee or employees of Defendants  
6 and none of the Defendants' officers, directors or managing agents committed the alleged acts, nor  
7 authorized them, nor ratified them, nor did Defendants or its officers, or managing agents have  
8 advance knowledge of the unfitness, if any, of the employee or employees who allegedly committed  
9 said acts, nor did Defendants employ said employee or employees with a conscious disregard of the  
10 rights or safety of others.

11 32. AS A THIRTY-SECOND, SEPARATE AND AFFIRMATIVE DEFENSE,  
12 Defendants allege that the Complaint is uncertain.

13 33. AS A THIRTY-THIRD, SEPARATE AND AFFIRMATIVE DEFENSE,  
14 Defendants allege that the Complaint fails to properly state a claim on which prejudgment interest  
15 may be awarded because the amount of any damages is not reasonably certain.

16 34. AS A THIRTY-FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
17 Defendants allege that if Plaintiff suffered any emotional distress, his emotional distress was caused  
18 by factors other than Plaintiff's employment, the actions of Defendants, or anyone acting on  
19 Defendants' behalf.

20 35. AS A THIRTY-FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
21 Defendants allege that if Plaintiff suffered any emotional distress, Plaintiff contributed to his own  
22 distress and, by reason of his contribution, any remedy to which he might otherwise be entitled must  
23 be denied or reduced accordingly.

24 36. AS A THIRTY-SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
25 Defendants allege that any award to Plaintiff must be offset by all sums heretofore received by  
26 Plaintiff from other sources, including but not limited to, unemployment insurance, private  
27 insurance, state disability insurance, Social Security disability payments, workers' compensation  
28 payments, and any sums earned by Plaintiff in other employment.



1           37. AS A THIRTY-SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
2 Defendants allege that the Complaint fails to properly state a claim for costs or attorneys' fees under  
3 Government Code section 12965(b), Civil Code section 1021.5 or any other basis.

4           38. AS A THIRTY-EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
5 Defendants allege that the Complaint fails to properly state a claim for recovery of compensatory or  
6 general damages, or recovery of damages on any basis.

7           39. AS A THIRTY-NINTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
8 Defendants allege that it is not vicariously liable for any act or omission of any other person, by way  
9 of *respondeat superior*, agency or otherwise.

10          40. AS A FORTIETH, SEPARATE AND AFFIRMATIVE DEFENSE,  
11 Defendants allege that Plaintiff's Complaint is barred in whole or in part because Defendants'  
12 conduct was privileged at all material times.

13          41. AS A FORTY-FIRST, SEPARATE AND AFFIRMATIVE DEFENSE,  
14 Defendants allege that, assuming *arguendo*, any employee of Sara Lee Corporation, Earthgrains  
15 Baking Companies, Inc. or Bimbo Bakeries USA, Inc. engaged in any unlawful conduct toward  
16 Plaintiff (which Defendants deny), Defendants neither knew nor reasonably should have known of  
17 said unlawful conduct.

18          42. AS A FORTY-SECOND, SEPARATE AND AFFIRMATIVE DEFENSE,  
19 Defendants allege that, assuming *arguendo*, any employee or agent of Defendants engaged in any  
20 unlawful conduct toward Plaintiff (which Defendants deny), such conduct was contrary to  
21 Defendants' express policies and beyond the course and scope of that individual's employment or  
22 agency relationship and cannot be attributed to Defendants, and Defendants cannot be held liable for  
23 any such actions.

24          43. AS A FORTY-THIRD, SEPARATE AND AFFIRMATIVE DEFENSE,  
25 Defendants allege that Plaintiff's claims are unreasonable and/or asserted against Defendants in bad  
26 faith, and are frivolous, and for that reason justify an award of attorneys' fees and costs against  
27 Plaintiff pursuant to the California Code of Civil Procedure section 128.7 and pursuant to the  
28 California Rules of Court.

1           44. AS A FORTY-FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
2 Defendants allege that Plaintiff's claims are preempted by the National Labor Relations Act and/or  
3 the Labor Management Relations Act.

4           45. AS A FORTY-FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
5 Defendants Sara Lee Corporation and Bimbo Bakeries USA, Inc. allege that at no time did they  
6 employ Plaintiff, and accordingly, they are not proper defendants in this action.

7           46. AS A FORTY-SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
8 Defendants reserve the right to amend its answer should it later discover facts demonstrating the  
9 existence of new and/or additional affirmative defenses, and/or should a change in the law support  
10 the inclusion of new and/or additional defenses.

11           47. AS A FORTY-SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
12 Defendants allege that any recovery on Plaintiff's Complaint, and each and every purported claim  
13 alleged therein, is barred because Defendants' conduct was based on legitimate, non-discriminatory  
14 and non-retaliatory business reasons and not based upon Plaintiff's alleged exercise of his rights  
15 under the California Family Rights Act ("CFRA").

16           48. AS A FORTY-EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
17 Defendants allege that at all relevant times, they had a good faith reason, based on reasonable  
18 grounds, for believing its actions did not violate or interfere with Plaintiff's rights under the  
19 California Family Rights Act ("CFRA") [Cal. Gov't Code § 12945.1, et seq.].

20           49. AS A FORTY-NINTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
21 Defendants allege that any recovery on Plaintiff's Complaint, or any purported claim alleged therein,  
22 is barred because Plaintiff was not discriminated or retaliated against and/or subjected to an adverse  
23 employment action because of his alleged exercise of his rights under the CFRA.

24           50. AS A FIFTIETH, SEPARATE AND AFFIRMATIVE DEFENSE, Defendants  
25 allege that Plaintiff's California Labor Code section 6310 claim is barred to the extent that Plaintiff  
26 failed to timely invoke and/or fully exhaust his administrative remedies, including but not limited to,  
27 the filing of a complaint with the California Labor Commissioner pursuant to Labor Code section  
28 98.7, as required by a litigant seeking damages pursuant to these provisions. *See Campbell v.*

1 *Regents of the Univ. of Cal.*, 35 Cal.4th 311, 333-34 (2005).

2 51. AS A FIFTY-FIRST, SEPARATE AND AFFIRMATIVE DEFENSE,  
3 Defendants allege that the Complaint and each and every cause of action alleged therein is barred  
4 because all actions taken by Defendants with respect to Plaintiff were, at all times relevant to this  
5 action, taken in good faith without any intent to retaliate or discriminate against Plaintiff in any  
6 manner prohibited by California Labor Code section 6310, or any other law or public policy.

7 52. AS A FIFTY-SECOND, SEPARATE AND AFFIRMATIVE DEFENSE,  
8 Defendants allege that any violation of the Labor Code or an order of the Industrial Welfare  
9 Commission was an act or omission made in good faith and Defendant had reasonable grounds for  
10 believing that the act or omission was not a violation of the Labor Code or any order of the Industrial  
11 Welfare Commission and that, accordingly, it has not willfully or intentionally failed to pay  
12 additional compensation to Plaintiff.

13 53. AS A FIFTY-THIRD, SEPARATE AND AFFIRMATIVE DEFENSE,  
14 Defendants allege that Plaintiff was properly compensated for all hours of work in accordance with  
15 applicable law.

16 54. AS A FIFTY-FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
17 Defendants are informed and believe that further investigation and discovery will reveal, and on that  
18 basis allege, that any monies alleged to be owed to Plaintiff have been paid in full and any  
19 obligations they may have owed to Plaintiff has been paid or otherwise satisfied in full in  
20 compliance with the Labor Code.

21 55. AS A FIFTY-FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
22 Defendants allege that they have complied with all applicable Industrial Welfare Commission Orders  
23 regulating wages, hours and working conditions with respect to Plaintiff, barring Plaintiff from being  
24 eligible for any relief pursuant to the Labor Code.

25 56. AS A FIFTY-SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
26 Defendants allege that Plaintiff is not entitled to any penalty award under California Labor Code  
27 section 1194 because Defendants did not willfully fail to comply with the compensation provisions  
28 of the California Labor Code, or the applicable Wage Orders, but rather acted in good faith and had



1 reasonable grounds for believing they did not violate them.

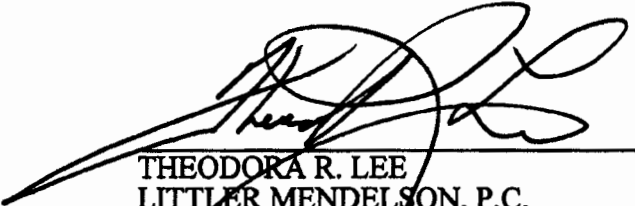
2 57. AS A FIFTY-SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,  
3 Defendants presently have insufficient knowledge or information upon which to form a belief as to  
4 whether additional, as yet unstated, defenses may be warranted and reserve the right to assert  
5 additional defenses or affirmative defenses in the event discovery and/or further investigation  
6 indicates such defenses are appropriate.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Defendants pray for judgment from the Court that:

- 9 1. Plaintiff takes nothing by this action;
- 10 2. The Complaint, and each purported cause of action alleged therein, be  
11 dismissed in its entirety with prejudice;
- 12 3. Defendants be awarded its costs of suit incurred herein;
- 13 4. Defendants be awarded their attorneys' fees pursuant to law, including but not  
14 limited to California Code of Civil Procedure section 1033.5(a)(10)(B); and
- 15 5. Defendants be awarded such other and further relief as the Court deems just  
16 and proper.

17 Dated: May 23, 2013

18   
19 THEODORA R. LEE  
20 LITTLER MENDELSON, P.C.  
21 Attorneys for Defendants  
22 SARA LEE CORPORATION,  
23 EARTHGRAINS BAKING COMPANIES,  
24 INC. AND BIMBO BAKERIES USA, INC.

25 Firmwide:120473935.1 046057.1060



**PROOF OF SERVICE BY MAIL**

I am employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 650 California Street, 20th Floor, San Francisco, California 94108.2693. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On May 23, 2013, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

**DEFENDANTS' GENERAL DENIAL AND AFFIRMATIVE DEFENSES**

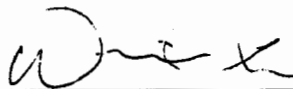
in a sealed envelope, postage fully paid, addressed as follows:

Christopher B. Dolan  
Michael DePaul  
Ghazaleh Modarresi  
The Dolan Law Firm  
The Dolan Building  
1438 Market Street  
San Francisco, CA 94102

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 23, 2013, at San Francisco, California.



Winnie Lee